

**COMPREHENSIVE PERMIT  
APPLICATION  
TO THE  
TOWN OF ACTON  
ALEXAN CONCORD  
48 & 54 OLD POWDERMILL ROAD  
CONCORD, MASSACHUSETTS  
JANUARY 28, 2008**

*Prepared for:*

**WEST CONCORD DEVELOPMENT, LLC  
130 GOULD ST., SUITE 121  
NEEDHAM, MASSACHUSETTS 02494**

*Prepared by:*

**BEALS ASSOCIATES, INC.  
98 NORTH WASHINGTON STREET  
BOSTON, MASSACHUSETTS 02114**

**AND**

**VANASSE & ASSOCIATES, INC.  
10 NORTH EAST BUSINESS CENTER DRIVE  
SUITE 314  
ANDOVER, MASSACHUSETTS 01810**

**Project Number:  
C-472.01**

**Concord, Massachusetts**

**BEALS ASSOCIATES INC.**

Needham Corporate Center  
160 Gould Street, Suite 121  
Needham, MA 02494  
Phone: (781) 455-0999  
Fax: (781) 455-0996

## West Concord Development LLC

January 28, 2008

Town of Acton  
Board of Appeals  
472 Main Street  
Acton, Massachusetts 01720

Ladies and Gentlemen:

We respectfully submit the attached Application for a Comprehensive Permit under Massachusetts General Law Chapter 40B in connection with our proposed multi-family development located at 48 Old Powder Mill Road in Concord, on the border with Acton, Sudbury and Maynard.

As you are aware, we are currently seeking a Comprehensive Permit from the Town of Concord's Zoning Board of Appeals for a 350-unit apartment community to be developed in Concord. Access to the community will be from Acton via Sudbury Road and that portion of Old Powder Mill Road that crosses the town border from Acton into Concord. Our research indicates that the portion of Old Powder Mill Road in Acton is a public way, but because the documentation is somewhat complicated and opaque, we are seeking a Comprehensive Permit from Acton's Board of Appeals to ensure that the use or improvement of the road for multi-family residential purposes will be confirmed. In addition, as described in the attached application, we are proposing substantial improvements to other public roads in Acton and are seeking approvals for those improvements in the Comprehensive Permit application as well.

Since meeting with the Acton Board of Selectmen in June 2007, we have met with representatives from the Town of Acton and surrounding communities, and have worked collaboratively to design a luxury residential community that will fit into the fabric of the area and provide a mix of housing types. We look forward to continuing to work with the Town of Acton during the approval process to provide safe and efficient access to this new residential neighborhood.

Our site is well-suited for a luxury rental community. The new apartment community will transform an aging industrial property into a vibrant new neighborhood with a mix of amenities for the enjoyment of the residents. The area's topography and existing and proposed vegetation will provide significant buffers from existing nearby homes. Soil and groundwater conditions at the site are appropriate for construction of a wastewater treatment plant, so that the new housing will have no impact on either Acton's or Concord's wastewater systems. In addition, this new neighborhood will help to fill the area's housing needs for people of moderate income, as 25% (88) of the units will be reserved for rental to families with moderate income levels.

Material submitted with this application includes MassHousing's Site Eligibility Letter dated December 6, 2007, and our purchase and sale agreement for the subject property, which are provided to you as evidence of our satisfaction of the jurisdictional requirements of Chapter 40B.

Also enclosed is a check in the amount of \$5,000 representing the filing fee for the enclosed application, which fee was determined in consultation with Planning Director Roland Bartl. We understand that the Board of Appeals may decide to hire a traffic engineer as a peer reviewer to assist the Board in assessing the impacts of our proposed development upon Acton's roads, and that the costs of such peer reviewer will be in addition to the enclosed filing fee.

Please don't hesitate to contact us with any questions, concerns or requests for additional information related to the enclosed application.

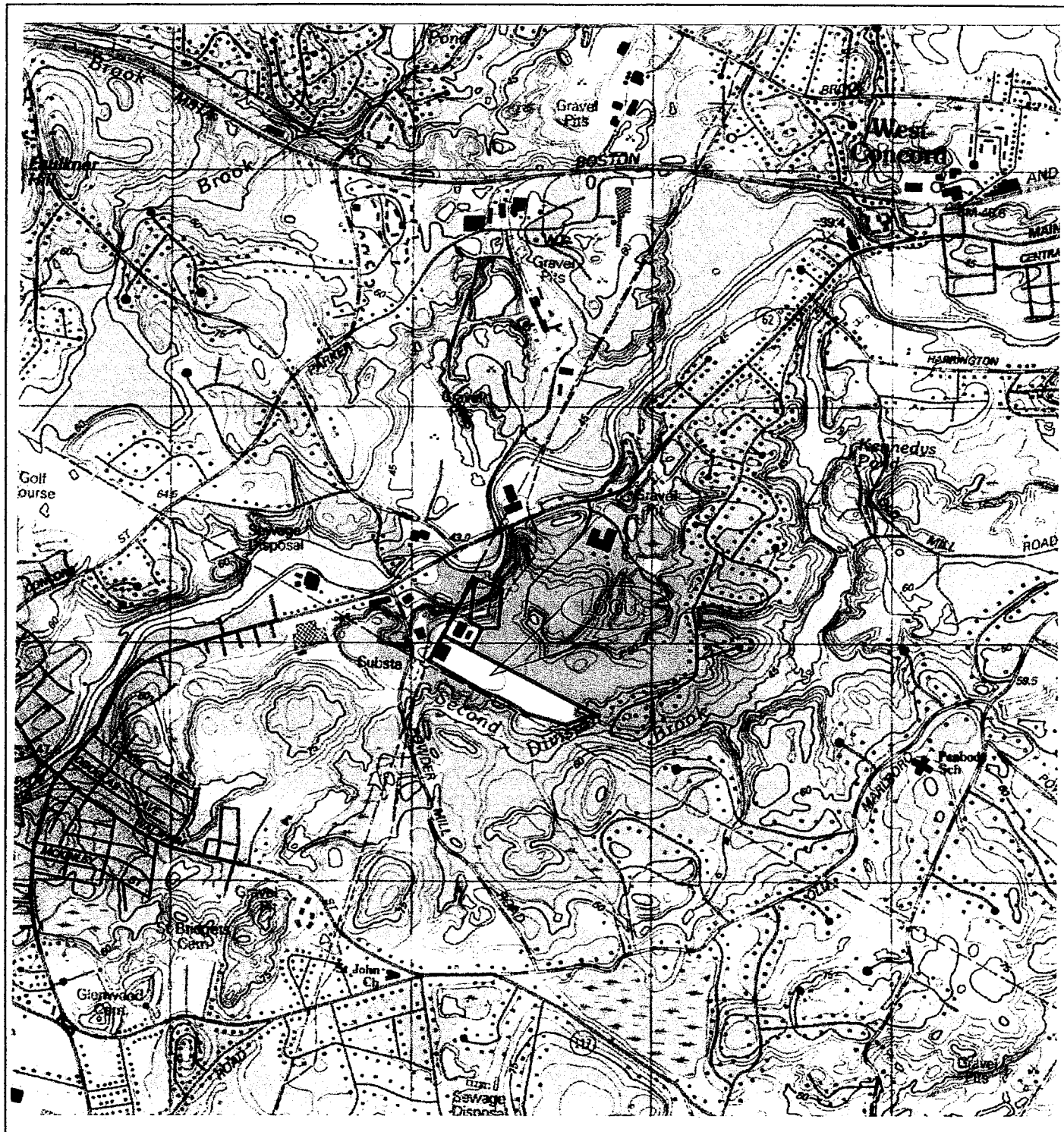
Sincerely,

West Concord Development LLC



Robert D. Hewitt, Vice President

Cc: Town of Concord Zoning Board of Appeals



## LOCUS PLAN

**Source:** USGS Topographic Quadrangle  
for Maynard  
7.5 x 15 Minute Series (Metric)

**Scale:** 1:25,000 or 1" = 2083.33'

**Comprehensive Permit Application**  
**Town of Acton**  
 Alexan Concord  
 Old Powdermill Rd., Concord

*Prepared by Beals Associates, Inc. - Boston, Massachusetts*

## COMPREHENSIVE PERMIT

### APPLICATION FORM

Refer to the "Rules and Regulations for Comprehensive Permits" available from the office of the Board of Appeals for detailed permit filing requirements. Contact the Building Department at 264-9632 with any questions. Incomplete applications may be denied.

(Please type or print your application)

1. Street Address of Site 48 & 54 Old Powdermill Road, Concord  
Name of Proposed Development Alexan Concord
2. Applicant's Name West Concord Development, LLC  
Address 160 Could Street;; Suite 121, Needham, Ma  
Telephone 781-455-0999 Fax 781-455-0996 e-mail rhewitt@tcresidential.com
3. Record Owner Name FTN Limited Partnership  
Address: 30 Soldiers Field Place, Boston, Ma 02135  
Telephone 617-787-5551
4. Zoning District(s) of Parcel(s) Limited Industrial  
Town Atlas Map(s)/ Parcel Number(s) Concord Assessors A12 2971-4, B12 2971-6 & B13 2973
- 5 a) Total development site area 30.1 a b) Number of dwelling units 350  
c) Number of affordable units 88 d) Number of units accessible/  
e) Total open space area 18.1 a adaptable for persons w/ disabilities n/a  
g) Total length of road(s) public 1.130±ft private N/A ft  
i) Method of wastewater disposal private sewage treatment plant

The undersigned hereby apply to the Planning Board for a Comprehensive Permit under M.G.L. c. 40B, §§ 20-23. The undersigned hereby certify that the information on this application and plans submitted herewith are correct, and that, to the best of his/her knowledge, the application complies with all applicable provisions of Law and Regulations.

Signed under the penalties of perjury in accordance with M.G.L. c. 268, § 1A.

WEST CONCORD DEVELOPMENT, LLC

J. S. [Signature]  
Signature of Petitioner(s) VICE PRESIDENT OF ITS  
GENERAL PARTNER

Jan 15, 2008  
Date

\_\_\_\_\_  
Signature of Petitioner(s)

\_\_\_\_\_  
Date

#### RECORD OWNER'S KNOWLEDGE AND CONSENT

I hereby assert that I have knowledge of and give my consent to the application presented above.

\_\_\_\_\_  
Signature of Record Owner(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Record Owner(s)

\_\_\_\_\_  
Date

**COMPREHENSIVE PERMIT  
APPLICATION FORM**

Refer to the "Rules and Regulations for Comprehensive Permits" available from the office of the Board of Appeals for detailed permit filing requirements. Contact the Building Department at 264-9632 with any questions. Incomplete applications may be denied.

(Please type or print your application)

1. Street Address of Site 48 & 54 Old Powdermill Road, Concord  
Name of Proposed Development Alexan Concord
2. Applicant's Name West Concord Development, LLC  
Address 160 Gould Street, Suite 121, Needham, Ma  
Telephone 781-455-0999 Fax 781-455-0996 e-mail rhewitt@wconcordresidential.com
3. Record Owner Name FTN Limited Partnership  
Address: 30 Soldiers Field Place, Boston, Ma 02135  
Telephone 617-787-5551
4. Zoning District(s) of Parcel(s) Limited Industrial  
Town Atlas Map(s)/ Parcel Number(s) Concord Assessors A12 2971-4, B12 2971-6 & B13 2973
- 5 a) Total development site area 30.1 a b) Number of dwelling units 350  
c) Number of affordable units 88 d) Number of units accessible/  
e) Total open space area 18.1 a adaptable for persons w/ disabilities n/a  
g) Total length of road(s) public 1.130± ft private N/A ft  
h) Method of wastewater disposal private sewage treatment plant

The undersigned hereby apply to the Planning Board for a Comprehensive Permit under M.G.L. c. 40B, §§ 20-23. The undersigned hereby certify that the information on this application and plans submitted herewith are correct, and that, to the best of his/her knowledge, the application complies with all applicable provisions of Law and Regulations.

Signed under the penalties of perjury in accordance with M.G.L. c. 268, § 1A.

Signature of Petitioner(s)

Date


Signature of Petitioner(s)

Date

**RECORD OWNER'S KNOWLEDGE AND CONSENT**

I hereby assert that I have knowledge of and give my consent to the application presented above.

FTN LIMITED PARTNERSHIP by ALC Corp, General Partner

  
Signature of Record Owner(s) - Michael A. Bass  
President

Date

Signature of Record Owner(s)

Date

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

TAC (TM) STAFF 103F645C001B8B-2274-9F 1/11/2008 11:48:53 6247 5000.00

**TCR Northeast Residential LP**

6400 Congress Avenue  
Suite 2100  
Boca Raton, FL 33487  
561/998-4444

Bank of America  
Tampa, FL

DATE  
January 11, 2008

CHECK NO.  
6247

AMOUNT  
\$\*\*\*\*\*5,000.00

Pay: \*\*\*\*\*Five thousand dollars and no cents

PAY  
TO THE  
ORDER OF

Town of Acton  
472 Main Street  
Acton, MA 01720

*Tom Patterson*

⑈000006247⑈ ⑆063100277⑆003068904624⑈

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**APPENDIX A**

**ARTICLES OF INCORPORATION**

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# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "WEST CONCORD DEVELOPMENT LLC", FILED IN THIS OFFICE ON THE TWELFTH DAY OF JANUARY, A.D. 2007, AT 12:36 O'CLOCK P.M.



4284135 8100

070040073

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5351098

DATE: 01-12-07



CERTIFICATE OF FORMATION  
OF  
WEST CONCORD DEVELOPMENT LLC

This Certificate of Formation is being executed for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act.

1. The name of the limited liability company is West Concord Development LLC.
2. The company shall be a limited dividend entity in conformance with the requirements of M.G.L. c. 40B.
3. The address of the registered office of the limited liability company in Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The registered agent of the limited liability company at that address is Corporation Service Company.

January 9, 2007

  
Laura Hopkins, Authorized Person

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:47 PM 01/12/2007  
FILED 12:36 PM 01/12/2007  
SRV 070040073 - 4284135 FILE

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**APPENDIX B**

**SITE APPROVAL LETTER**

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Massachusetts Housing Finance Agency  
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000 | FAX: 617.854.1091  
TDD: 617.854.1025 | www.masshousing.com

December 6, 2007

VIA CERTIFIED MAIL

Mr. Timothy W. O'Connor  
Vice President  
West Concord Development LLC  
Needham Corporate Center  
160 Gould Street, Suite 121  
Needham MA 02494

RE: Alexan Concord - #SA-07-001  
Town of Concord, MA  
Access through Acton, MA  
Project Eligibility (Site Approval) Application

Dear Mr. O'Connor:

This letter is in response to your application for a determination of Project Eligibility (Site Approval) pursuant to Massachusetts General Laws Chapter 40B and 760 CMR 30-31 (the "Comprehensive Permit Rules") under the following programs (collectively, the "Programs"):

- Expanding Rental Affordability ("ERA") Program of the Massachusetts Housing Finance Agency ("MassHousing")
- 80/20 Program of the Massachusetts Housing Finance Agency
- New England Fund ("NEF") Program of the Federal Home Loan Bank of Boston

The proposal consists of the construction of 350 units of rental housing on a 30+-acre site located at 48 Old Powder Mill Road at the intersection of Concord, Acton, Sudbury and Maynard in West Concord (the "Municipality") (the "Site"), with access through Acton, MA.

This letter is intended to be a written determination of Project Eligibility (Site Approval) in accordance with the Comprehensive Permit Rules, establishing fundability by a subsidizing agency under a low- and moderate-income housing subsidy program. To the extent that Project funding is provided by a non-governmental entity (NEF), this letter is also intended to be a determination of Project Eligibility (Site Approval) by a Project Administrator (MassHousing) under the Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity issued by the Department of Housing and Community Development on

February 14, 2003 (the "Guidelines"). This determination of Project Eligibility (Site Approval) may be used in both the Municipality and with respect to Site access in Acton.

MassHousing staff has performed an on-site inspection of the Site and reviewed the pertinent information for the Project submitted by the applicant, the Municipality, the Town of Acton, and others in accordance with the Comprehensive Permit Rules and the Guidelines. As a result of our review, we have made the following findings: (1) the proposed housing design and land use plan are generally appropriate for the Site and Site location; (2) the proposed Project appears financially feasible within the housing market in which it will be situated based on comparable rental developments; (3) an initial pro forma has been reviewed and the Project appears financially feasible on the basis of estimated development costs; (4) the proposed financing is reasonable and profit is properly limited; and (5) the developer is financially responsible and meets the general eligibility standards of the Programs. In addition, the applicant would be eligible to apply as a limited dividend organization in connection with an application for financing under any of the Programs.

Staff has also determined that the Project appears generally eligible under the requirements of the Programs, subject to final review of eligibility and to Final Approval. In order to satisfy the Program requirements, financing for the Project must originate from a subsidizing lender such as MassHousing or a bank that is a member of the Federal Home Loan Bank of Boston (FHLBB). Should you choose to finance the Project through a member bank of the FHLBB, a minimum of 25 percent of the permanent financing must be obtained from the NEF program; the permanent financing must be for a term of at least 5 years following completion of construction of the project; and other financing terms must be substantially similar to terms used by the Project Administrator in its own lending programs or otherwise be commercially reasonable. Evidence of financing for the Project must be provided during your request to MassHousing for Final Approval. The Regulatory Agreement shall provide that any transfer of all or a portion of the NEF lender's interest (including participations or sale of servicing rights) during the first 5 years of the permanent financing shall be subject to the approval of the Project Administrator.

The Municipality and the Town of Acton were each a thirty (30)-day notice to review the proposed site approval application and submit comments to MassHousing. Based on MassHousing's site approval and design review and the comments received from the Municipality and the Town of Acton, the following issues should be addressed in your applications for MassHousing Official Action Status (OAS) and/or loan commitment under any of the Programs:

1. The developer shall enter into a regulatory agreement acceptable to MassHousing in the form for the applicable Program. If the Development is funded through the NEF Program, MassHousing will serve as the Project Administrator under the Regulatory Agreement.
2. The Applicant shall submit a Notice of Intent to the Town of Concord Conservation Commission seeking verification of all wetland boundaries and shall comply with all

conditions of an Order of Conditions issued by the Conservation Commission or the Department of Environmental Protection, including but not limited to those related to provision of adequate storm water management and wetlands protection.

3. As part of the Massachusetts Environmental Policy Act (MEPA) process, the Applicant shall provide a traffic/engineering study that addresses traffic impacts on the local street system in West Concord, Acton and surrounding municipalities, which shall be acceptable to the comprehensive permit granting authority.

Please be prepared to address these and other local concerns during the public hearing process.

In addition to the above requirements, we note the Town of Acton's Board of Selectmen's concerns pertaining to the Assabet River Watershed environmental impacts, including, but not limited to, the effects the project may have on the Nuclear Metals, Grace and Agway 21E sites. We strongly encourage you to work with the Municipality with respect to these issues.

In connection with the local hearing on this project, it may be helpful for you to be aware of the "Local 40B Review and Decision Guidelines" issued in November 2005, by the Massachusetts Housing Partnership and available at [http://www.mhp.net/community/chapter\\_40b.php](http://www.mhp.net/community/chapter_40b.php). These guidelines have been endorsed by MassHousing, DHCD and the other state agencies that finance affordable housing.

We note that under current regulations, the proposed Development would exceed the Large Scale Project limitation for the Municipality (in this case, 250 total residential units) under 760 CMR 31.07(1)(g), which is effective for comprehensive permit applications filed after August 31, 2001. However, the Municipality has provided a letter to MassHousing, dated December 28, 2006, acknowledging that the application exceeds this "large project cap" and provides its consent for the applicant to submit such application.

This Site Approval is expressly limited to the development of no more than 350 rental units under any of the Programs, subject to the respective minimum affordability requirements (including percentage of units for low- or moderate-income households, income eligibility standards and duration of restrictions requiring low- or moderate-income housing) and the developer's limited dividend status requirement, as set forth in the attached program term sheets for financing under MassHousing's 80/20 Rental Program or in the Guidelines for financing under the NEF Program. It is not a commitment or a guarantee of MassHousing or NEF financing or state subsidies and does not constitute a site plan or building design approval. Should you consider the use of other housing subsidy programs or the construction of additional units, you will be required to submit a new site approval application for review by MassHousing.

Enclosed herewith are copies of MassHousing's Developer Fee and Overhead Policy (9/01), Limited Dividend Policy (1/06) and Acquisition Value Policy (1/06). In particular, please note the Special Restrictions for Comprehensive Permit Developments in the latter policy document.

For guidelines on the review process for applications to NEF, you are advised to consult the Guidelines, a copy of which may be found at <http://www.mass.gov/dhcd/ToolKit/NEFguide.pdf>. Further, we urge you to carefully review with legal counsel the most recent changes to 760 CMR 30.00: Procedural Regulations of the Housing Appeals Committee and 760 CMR 31.00: Housing Appeals Committee: Criteria for Decisions Under M.G.L. c. 40B, §§ 20 through 23.

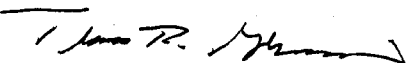
This approval will be effective for a period of two years from the date of this letter. Should the applicant not apply for a comprehensive permit within this period or should MassHousing not extend the effective period of this letter in writing, the letter shall be considered to have expired and no longer be in effect. In addition, the developer is required to notify MassHousing at the following times throughout this two year period: (1) when the applicant applies to the local ZBA for a comprehensive permit, (2) when the ZBA issues a decision, and if applicable, (3) when any appeals are filed.

Please note that, should a comprehensive permit be issued, prior to construction or issuance of a building permit, the developer is required to submit to MassHousing a request for Final Approval of the Project, as it may have been amended, in accordance with the Comprehensive Permit Rules (760 CMR 31.09) and the Guidelines (Section 9), and Final Approval will not be issued unless MassHousing is able to make the same findings as required at Site Approval at the time of issuing Final Approval.

**Further Opportunities for Assistance from MassHousing:** Please also note that MassHousing will not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the applicable housing subsidy program (MassHousing's Rental Programs or the New England Fund of the FHLBB, for which MassHousing serves as Project Administrator), as reflected in the applicable regulatory documents (see [www.masshousing.com/rentaldevelopers](http://www.masshousing.com/rentaldevelopers) for forms). A Modification of the Comprehensive Permit may be required. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the applicant may wish to submit a "final draft" of the comprehensive permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the comprehensive permit after its initial issuance.

If you have any questions concerning this letter, please contact Nancy Andersen, Manager of Rental Programs and Development, at 617-854-1360.

Sincerely,



Thomas R. Gleason  
Executive Director

Mr. Timothy W. O'Connor  
RE: Alexan Concord (#SA-07-001)  
Page - 5

TRG/DS

Enclosures:

MassHousing's 80/20 Program Term Sheet  
MassHousing's Developer Fee and Overhead Policy (9/01)  
MassHousing's Limited Dividend Policy (1/06)  
MassHousing's Acquisition Value Policy (1/06)

cc: Ms. Tina Brooks, Undersecretary of DHCD  
Ms. Virginia McIntyre, Chair, Board of Selectmen, Town of Concord  
Ms. Marcia Rasmussen – Planning Director, Town of Concord  
Mr. F. Dore'Hunter, Esq. Chair, Board of Selectman, Town of Acton

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**APPENDIX C**

**PURCHASE AND SALE AGREEMENT**

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Zoning Board of Appeals Comprehensive Permit Application  
Alexan Concord  
48 Old Powder Mill Road, Concord, MA

## **Evidence of Site Control**

Evidence of Site Control is provided per the Attached:

- Purchase and Sale Agreement between FTN Limited Partnership (the "Seller") and TCR Northeast Land Acquisition Limited Partnership (the "Buyer"), dated 20 October 2006.
- Assignment and Assumption of Purchase and Sale Agreement, dated January 12, 2007, between TCR Northeast Land Acquisition Limited Partnership and West Concord Development LLC.

## **ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT**

This **ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT** (this "**Assignment**") is made as of January 12, 2007, by and between **TCR NORTHEAST LAND ACQUISITION LIMITED PARTNERSHIP**, a Texas limited partnership ("**Assignor**"), and **WEST CONCORD DEVELOPMENT LLC**, a Delaware limited liability company ("**Assignee**").

### **RECITALS:**

This Assignment is made with reference to the following facts:

- A. FTN Limited Partnership, a Massachusetts limited partnership ("**Seller**"), is currently the owner of that certain property located in Concord, Massachusetts containing approximately thirty and thirty-nine hundredths (30.39) acres (the "**Property**").
- B. Seller and Assignor entered into that certain Purchase and Sale Agreement dated October 20, 2006 for the purchase and sale of the Property (as amended, the "**Agreement**").
- C. Assignor, which holds bare legal title to the Agreement as agent for and nominee of Assignee, desires to assign to Assignee all of its right, title and interest in and to the Agreement and the Property, and Assignee desires to accept such assignment and to assume all of Assignor's obligations as to the purchase of the Property under the Agreement, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Recitals.** The Recitals are incorporated herein by this reference. Terms used but not defined herein shall have the meanings given thereto in the Agreement.
2. **Assignment.** Assignor assigns, transfers, conveys and delegates to Assignee, and Assignee accepts from Assignor, all of Assignor's right, title, interest, duties and obligations in, to and under the Agreement and all claims and rights that Assignor may have or to which Assignor may be entitled under or by virtue of the Agreement. It is the intention of the parties hereto that Assignee shall have and be vested with all of the same rights, benefits, risks and obligations conferred upon and undertaken by Assignor in the Agreement as though, and to the same extent as if, Assignee had been named the purchaser of the Property in the Agreement.
3. **Assumption.** Assignee assumes and agrees to perform and observe all agreements, covenants and obligations to be performed and observed by Assignor under the Agreement.

4. Indemnifications. Assignee agrees to hold Assignor free and harmless from any and all losses, liabilities, obligations, debts and expenses arising under the Agreement and the transactions contemplated therein from and after the date of this Assignment. Assignor agrees to hold Assignee free and harmless from any and all losses, liabilities, obligations, debts and expenses arising under the Agreement and the transactions contemplated therein prior to the date of this Assignment.

5. Miscellaneous.

5.1 Governing Law; Assigns. This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

5.2 Cooperation. Assignor and Assignee shall cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order to fully carry out the intent and purposes of the transactions contemplated hereby.

5.3 Counterparts. This Assignment may be executed in any number of identical counterparts.

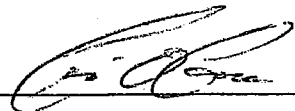
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IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

**ASSIGNOR:**

**TCR NORTHEAST LAND ACQUISITION  
LIMITED PARTNERSHIP,**  
a Texas limited partnership

By: TCR Northeast Properties, Inc.,  
a Texas corporation, its General Partner

By: 

Name: Tim O'Connor

Title: VP

**ASSIGNEE:**

**WEST CONCORD DEVELOPMENT LLC,**  
a Delaware limited liability company

By: NE 104 Concord Limited Partnership,  
a Delaware limited partnership, its Manager

By: NE 102 Apartments GP LLC,  
a Delaware limited liability company,  
its General Partner

By: 

Name: Tim O'Connor

Title: VP

**PURCHASE AND SALE**  
**AGREEMENT**

This Agreement entered into as of the 20<sup>th</sup> day of October, 2006 (the "Effective Date," as defined in Section 15.19 below), by and between FTN Limited Partnership, a Massachusetts limited partnership with a principal place of business at 40 Soldiers Field Place, Boston, Massachusetts 02135 (the "Seller") and TCR Northeast Land Acquisition Limited Partnership, a Texas limited partnership, with a place of business at 160 Gould Street, Needham, Massachusetts 02494-2313 (the "Buyer"). The Seller and Buyer are hereinafter sometimes referred to collectively as the "Parties."

**RECITALS**

Seller wishes to sell the Premises (as defined in Article 2 below) to Buyer for development as a residential apartment complex consisting of up to 350 rental units through utilization of the comprehensive permit process established under M.G.L. c. 40B (the "40B Project"). Buyer wishes to buy the Premises for the purposes stated herein.

**ARTICLE 1**

**Agreement of Purchase And Sale**

Upon the terms hereinafter set forth, SELLER agrees to sell and convey to BUYER, and BUYER agrees to purchase from the SELLER, the premises described in Article 2.

**ARTICLE 2**

**Description Of Premises**

The land situated in Concord, Massachusetts, containing approximately 30.39 acres with all buildings and other improvements thereon and more particularly described on Exhibit A of this Agreement. The property described in this Article 2 is hereinafter referred to as the "Premises." The term "Premises" means and includes the following:

(a) All rights, privileges and easements appurtenant to the Premises owned by Seller, any rights of Seller to any land lying in the bed of any existing dedicated street, road or alley adjoining the Premises, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Premises;

(b) All buildings, improvements and fixtures (if any) owned by the Seller now or hereafter located on the Premises, including, without implied limitation, the one-story office building known and numbered 48 Old Powder Mill Road and the one-story office building known as and numbered 54 Old Powder Mill Road;

(c) The lease dated September 14, 1998 (the "Lease") by and between the Seller, as landlord, and L3 Communications, as tenant (the Tenant), subject to Seller's right to terminate the Lease as set forth in Section 4.2 below; and

(d) All government permits, licenses and approvals owned by Seller relating to the Premises outstanding at the time that the purchase and sale contemplated by this Agreement closes (the "Closing"), which are by their nature, transferable.

### **ARTICLE 3**

#### **Purchase Price, Initial Deposit, Additional Deposit, Prorations**

##### **3.1 Purchase Price.**

The Purchase Price shall be the sum of Twelve Million and 00/100 (\$12,000,000.00) U.S. Dollars plus an additional amount equal to Fifty-eight Thousand and 00/100 (\$58,000.00) U.S. Dollars times the number of permitted market rate units in excess of 187 units (the product of said numbers are hereinafter referred to as the "Market Rate Premium"). The term "market rate unit" shall mean a residential rental unit which can be rented without any restrictions as to income limitations set forth in the regulations promulgated pursuant to M.G.L. c. 40B. Buyer shall not be obligated to pay any additional amounts for any non-market rate residential units. The Purchase Price shall be payable as follows:

##### **3.2 Deposit.**

(a) No later than 5:00 p.m. E.S.T. on the date that is three (3) business days after the Effective Date, Buyer shall deposit with Commonwealth Land Title Insurance Company, at 150 Federal Street, Suite 200, Boston, Massachusetts 02110, attention Patricia Carlson, Esq.; telephone (617) 619-4800; fax (617) 619-4848 (the "Title Company"), the sum of Fifty Thousand and 00/100 (\$50,000.00) U.S. Dollars by official bank cashier's check or wire transfer pursuant to the Title Company's instructions as a good faith deposit (the "Initial Deposit").

(b) In the event Buyer does not terminate the Agreement pursuant to Section 5.5 below, Buyer shall deposit an additional Three Hundred Fifty Thousand and 00/100 (\$350,000.00) U.S. Dollars with the Title Company (the "Additional Deposit"), on or before that date which is three (3) days after the Due Diligence Termination Date (as defined in Section 5.3 below). The Initial Deposit and Additional Deposit and interest that is earned thereon, are hereinafter collectively referred to herein as the "Deposit." The Deposit shall be held in a segregated account in accordance with the provisions of Section 15.18 below. The Deposit shall be applied to the Purchase Price if the Closing occurs. If the Closing does not occur or if this Agreement otherwise terminates, the Deposit shall be distributed as provided herein.

### **3.3 Balance of Purchase Price.**

At the time of Closing, Buyer shall pay the balance of the Purchase Price, namely Eleven Million Six Hundred Thousand and 00/100 (\$11,600,000.00) U.S. Dollars, plus the Market Rate Premium, subject to the adjustments as provided for herein, in immediately available funds by wire transfer in accordance with wire instructions provided by the Title Company to the Buyer, and the Title Company shall pay over the Deposit to the Seller.

**3.4 Prorations.** Rental income, if any, utilities and all real and personal property taxes on the Premises for the tax period in which the Closing occurs shall be prorated and adjusted as of the date of Closing (the "Closing Date"). If the final amount of such taxes has not been established on the Closing Date, the preliminary tax amount established by the Town of Concord for the tax period in which the Closing occurs shall be used for the purposes of proration (and, if no preliminary tax amount has been established, then the tax amount for the prior tax year), with a further adjustment to be made after the Closing Date as soon as a final tax amount is established. All installments of betterment and other special assessments payable prior to Closing which are a lien on the Premises shall be the responsibility of Seller and all such installments payable after the Closing shall be the responsibility of Buyer. Any betterment and special assessments shall be deemed "Permitted Exceptions" as defined in Section 6.2. Any tax refunds or proceeds (including interest thereon) on account of a favorable determination resulting from a challenge, protest, appeal, abatement application or similar proceeding relating to taxes and assessments (collectively, "Tax Abatements") relating to the Premises (i) for all tax periods occurring prior to the tax period in which the Closing occurs will be retained by and paid exclusively to Seller, and (ii) for the tax period in which the Closing occurs will be prorated as of the Closing Date after reimbursement to Seller for all fees, costs and expenses (including reasonable attorneys' and consultants' fees) incurred by Seller in connection with such Tax Abatement, such that Seller will retain and be paid that portion of the tax refunds or proceeds from such Abatement as is applicable to the portion of the tax period prior to the Closing Date and Buyer will retain and be paid that portion of such tax refunds or proceeds as is applicable to the Premises for the portion of the tax period from and after the Closing Date. Nothing contained herein shall be construed as requiring the Seller to file for a Tax Abatement. After the Closing, Buyer will be responsible for and shall have the authority to control any Tax Abatement proceedings affecting the Premises for any period for which taxes are adjusted between the Parties under this Agreement and for any later period. Buyer and Seller will cooperate in pursuit of any such proceedings and in responding to reasonable requests of the other for information concerning the status of and otherwise relating to such proceeding.

**3.5 Non-refundable Portions of Deposit.** In the event that the Buyer does not terminate the Agreement on or before the Due Diligence Termination Date, then, over time, portions of the Deposit shall become non-refundable to the Buyer in the event that Buyer subsequently terminates the Agreement for any reason other than for Seller's default or pursuant to Section 10.1 below in the event of a Taking (as defined in Section 10.1 below). The amounts and the dates upon which portions of the Deposit become non-refundable are set forth below as follows:

January 1, 2007	\$20,000.00
February 1, 2007 through and including July 1, 2007	\$5,000.00 per month on the first day of each month during the period from February 1, 2007 through July 1, 2007.
August 1, 2007 through and including June 1, 2008	\$10,000.00 per month on the first day of each month during the period from August 1, 2007 through June 1, 2008

Said portions of the Deposit shall be non-refundable, except in the case of Seller's default or a Taking pursuant to Section 10.1 below, and shall be applicable to the Purchase Price. In the case of Seller's default or a Taking pursuant to Section 10.1 below, the entire Deposit shall be returned to Buyer.

**3.6 Seller's Closing Costs.** At the Closing, Seller shall pay and be responsible for the amount due for: (i) deed stamps, conveyance tax, documentary tax or any other tax or charge substituted therefor imposed in connection with the consummation of the transaction contemplated hereby; (ii) recording charges for any instrument which releases or discharges any lien or is otherwise required to cure or remove any defect in or encumbrance on title in accordance with Article 6 below; and (iii) Seller's counsel's fees and expenses and such other closing costs as are normally paid by a Seller in connection with the sale and transfer of real estate in Middlesex County, Massachusetts.

**3.7 Buyer's Closing Costs.** At the Closing, Buyer shall pay and be responsible for (i) recording charges (other than those for which Seller is responsible in accordance with the preceding Section 3.6 above); (ii) costs and fees in connection with any title commitment and premiums for any title insurance policy issued to the Buyer; (iii) the fee payable to Title Company for serving as escrow agent; and (iv) Buyer's counsel's fees and expenses and such other closing costs as are normally paid by a Buyer in connection with the sale and transfer of real estate in Middlesex County, Massachusetts.

#### **ARTICLE 4**

##### **Representations, Warranties, Covenants and Agreements**

**4.1 Seller's Representations and Warranties.** Seller makes the representations and warranties to Buyer which are set forth below as of the Effective Date and as of the Closing Date. Buyer acknowledges that, other than as specifically set forth below in this Section 4.1, Seller is not making and has not at any time made any representation or warranty of any kind or nature, either oral or written, directly or indirectly, expressed, implied, statutory or otherwise, with respect to the Premises, including, without limitation, representations or warranties as to merchantability, fitness for a particular purpose, title (other than Seller's warranty as to title set forth in the Deed), zoning, tax consequences, latent or patent physical or environmental condition, health or safety matters, utilities, valuation, projections, the applicability of any laws, rules or regulations or compliance therewith, and that except as otherwise provided herein, the



Buyer shall accept the Premises on the date of Closing strictly on an "as is, where is, with all faults" basis.

(a) This Agreement has been duly authorized, executed and delivered by Seller and all consents required under Seller's organizational documents or by law have been obtained. All documents that are to be executed by Seller and delivered to Buyer on the Closing Date have been, or on the Closing Date will be, duly executed, authorized and delivered by Seller. This Agreement and all such documents are, and on the Closing Date will be, legal, valid and binding obligations of Seller, enforceable in accordance with their terms and do not, and at the time of the Closing Date will not, violate any provisions of any agreement or judicial or administrative order to which Seller is a party, or to which Seller or any portion of the Premises is subject.

(b) There are no actions, suits or proceedings (including arbitration proceedings) pending or, to the best of Seller's knowledge, threatened, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, against Seller or which could have an adverse effect on the Premises or any portion thereof, Seller's interest therein, or Seller's ability to perform its obligations hereunder.

(c) Seller has not received any written notice of a Taking pursuant to Section 10.1 below.

(d) Except for the Lease, there are no leases, licenses, occupancy or related agreements or tenancies affecting the Premises. Seller has delivered to Buyer a true, correct and complete copy of the Lease; the term of the Lease expires on September 14, 2008; the Tenant did not exercise the Option to Purchase as set forth in Section 35 of the Lease; the Lease is in full force and effect; and there are no defaults thereunder or any events that with the passage of time or notice or both would become a default under the Lease.

(e) To the best of Seller's knowledge, after due inquiry, there are no material contracts or agreements related to the use, ownership or operation of the Premises.

(f) Seller has not generated, stored or disposed of any oil, petroleum products, hazardous materials, or any other material the maintenance or disposal of which is regulated or penalized under the laws or regulations of the Commonwealth of Massachusetts or of the United States (collectively, "Hazardous Materials") on the Premises. Except as listed on Exhibit B attached hereto and incorporated herein by this reference, Seller has no knowledge of any previous or present generation, storage, disposal, release or existence thereof.

(g) To the best of Seller's knowledge, the activities of its tenants, subtenants and licensees, if any, comply with all applicable environmental laws.

(h) Seller has disclosed or will disclose to Buyer all assessments, studies, sampling results, evaluations and other reports within Seller's possession or control relating to the environmental condition of the Premises.

(i) To the best of Seller's knowledge, there are not now any above ground or underground storage tanks located in, on or under the Premises. Seller has not removed, or caused to be removed, any underground storage tanks from the Premises and to the best of

Seller's knowledge, no underground storage tanks were removed from the Premises before Seller acquired title to the Premises. Seller's predecessor in title removed one (1) underground storage tank containing acetone from the Premises approximately twenty (20) years ago.

(j) Seller is not a foreign corporation, foreign partnership or foreign estate (as such terms are defined in Section 1445 of the Internal Revenue Code). Seller shall provide Buyer with an affidavit to this effect at Closing.

(k) There are no agreements of sale, options to purchase or rights of first refusal or first offer outstanding with respect to all or any portion of the Premises.

The representations and warranties contained herein shall survive the Closing Date for a period of one (1) year from and after the Closing Date.

**4.2 Seller's Covenants.** Seller hereby covenants and agrees with Buyer that from and after the Effective Date and through the Closing Date, Seller shall not, without the prior written consent of Buyer, which consent may be granted or withheld by Buyer in its sole discretion, (i) amend the Lease in any way whatsoever; (ii) enter into any leases or any other agreements with respect to the use or occupancy of the Premises, or any portion thereof; or (iii) enter into any contracts or agreements with respect to, or place any encumbrance on, the Premises, which cannot, as to each of the foregoing, be terminated without penalty upon not more than thirty (30) days notice. Nothing contained in this Section 4.2 is intended to prohibit the Seller from terminating the Lease after the Effective Date and any termination fee or other consideration relating to such termination shall be the sole property or responsibility of the Seller, as appropriate. Additionally, Seller hereby covenants and agrees with Buyer that between the Effective Date and the Closing Date, Seller shall not file any application for any change of the present zoning classification of the Premises unless Buyer approves such change, and, except as provided in Section 10.2 below, that between the Due Diligence Termination Date and the Closing Date, there shall be no material changes in the condition of the Premises or the improvements on the Premises from the condition in which Buyer shall have accepted the Premises and the improvements upon the expiration of the Due Diligence Period (as defined in Section 5.3 below).

**4.3 Buyer's Representations and Warranties.** Buyer hereby represents and warrants to Seller, as of the Effective Date and as of the Closing Date, that this Agreement has been duly authorized, executed and delivered by Buyer and all consents required under Buyer's organizational documents or by law have been obtained. All documents that are to be executed by Buyer and delivered to Seller on the Closing Date have been, or on the Closing Date will be, duly executed, authorized and delivered by Buyer. This Agreement and all such documents are, and on the Closing Date will be, legal, valid and binding obligations of Buyer, enforceable in accordance with their terms and do not, and at the time of the Closing Date will not, violate any provisions of any agreement or judicial or administrative order to which Buyer is a party or to which Buyer is subject. The representations and warranties contained herein shall survive the Closing Date for a period of one (1) year from and after the Closing Date.

**ARTICLE 5**  
**Access, Inspection, Diligence**

**5.1     Inspections.**

(a)     Subject to the rights of the Tenant under the Lease, Seller agrees that Buyer and its authorized agents or representatives shall be entitled to enter upon the Premises during the Due Diligence Period and until Closing, as necessary, upon at least twenty-four (24) hours advance notice to Seller and Tenant, to make such investigations, studies and tests including, without limitation, surveys, zoning, engineering and wetlands studies ("Property Investigations") as Buyer deems necessary or advisable. Buyer agrees to submit evidence satisfactory to Seller and Tenant of liability insurance coverage and workmen's compensation insurance coverage for Buyer's and/or Buyer's agents, employees, and independent contractors naming Seller and Tenant as an additional insured.

(b)     All Property Investigations made by Buyer shall be at Buyer's sole cost and expense and will be performed, to the greatest extent reasonably possible, so as to avoid damage or disruption to the Premises and Tenant's business operations, and Buyer shall repair and restore any damage or disruption to the Premises caused by the Property Investigations in a timely manner at Buyer's sole cost. Seller and Buyer hereby agree that the Property Investigations may include a Phase I or Phase II environmental site assessment and, with respect thereto, Buyer shall give Seller and Tenant advance notice of any proposed activities and shall allow a representative of Seller and Tenant to be present during any such activities. Buyer shall promptly provide to Seller a copy of any report, draft report or evaluation ("Reports") which indicates the presence of hazardous substances on the Premises. Except as specifically provided below, Buyer shall keep confidential and not disclose the results of any Property Investigations or the contents of any Reports.

(c)     In the event that Buyer, or the person performing such tests, determines that it is required by applicable law to notify a federal, state or local governmental agency or any other party with respect to the conditions at the Premises as a result of any Property Investigation undertaken by Buyer, Buyer shall immediately notify Seller thereof and Seller shall make such disclosure as Seller determines to be appropriate, but in conformity with the law. If Seller determines not to notify such public agency or other party after such notice and Buyer still believes that it is required by law to make such disclosure and so notifies Seller, Seller shall hire an independent consultant reasonably approved by Buyer to make the determination of whether such public disclosure is required and such determination will be binding upon both Buyer and Seller. Buyer shall assume all risk associated with the physical aspects of the Property Investigations and indemnify, defend and hold Seller, Tenant and their employees, agents and contractors harmless against any claim or demand on account of any loss, damage or injury to any person or property by reason of any act, omission or negligence by Buyer or its consultants or employees in connection with the physical aspects of the Property Investigations; provided, however, that Buyer shall have no indemnification obligation or other liability for, or in connection with, any claims arising from pre-existing conditions on or under the Premises, or those arising from the presence, discovery, or disturbance of any Hazardous Material previously existing on the Premises.

**5.2 Due Diligence Materials.** Seller shall deliver, or at Seller's option, make available to Buyer for review and copying, originals or complete and accurate copies of any and all of the following which are in the possession or control of Seller: (i) title, survey, environmental, property inspection and engineering materials and reports, and plans and specifications relating to the Premises; (ii) contracts and agreements relating to the operation of the Premises; (iii) governmental permits, licenses and approvals relating to the Premises; (iv) notices of outstanding violations or infractions, stop orders, penalty notices or other like communications received from any governmental board, body, officer or official regarding the Premises, if any. All such materials provided or made available by Seller to Buyer and all Reports and other materials prepared on behalf of Buyer in connection with the Property Investigations, are collectively referred to as the "Due Diligence Materials." All of the Due Diligence Materials may be utilized by the Buyer subject to the terms hereof.

**5.3 Due Diligence Period.** Buyer shall have from the Effective Date until 5:00 p.m. E.S.T. on the ninetieth (90<sup>th</sup>) day after the Effective Date (such period being referred to in this Agreement as the "Due Diligence Period," and the last day of such Period, the "Due Diligence Termination Date"), to conduct its Property Investigations.

**5.4 Exhibits.** The Parties shall negotiate in good faith during the Due Diligence Period the forms of any exhibits not attached to this Agreement on the Effective Date.

**5.5 Due Diligence Termination.** In the event that the Property Investigations reveal any matters which are not satisfactory to the Buyer in its sole discretion, or if for any other reason, Buyer, in its sole discretion, determines that the Premises are not suitable for its purposes, then Buyer may elect, by written notice to Seller, on or before 5:00 p.m. E.S.T. on the Due Diligence Termination Date, not to proceed with the transaction described herein, in which event, the Deposit shall be promptly returned to Buyer by Title Company, this Agreement shall terminate and be of no further force and effect, except for those undertakings which are clearly intended to survive a termination, and Buyer shall promptly return all Due Diligence Materials, together with copies of all Property Investigation reports to Seller, and also deliver copies of any plans prepared by Buyer's engineers or architects at no cost to Seller; provided, however, the reports and plans shall include only such reports and plans created by third parties at Buyer's direction and shall in no event include any proprietary, design, internal or other work product of such third parties or of Buyer. If Buyer fails to give timely written notice to terminate on or before the Due Diligence Termination Date, then Buyer shall be deemed to have waived the right to terminate this Agreement pursuant to this Section 5.5.

## **ARTICLE 6**

### **Deed, Title and Survey**

**6.1 Required State of Title.** The Premises are to be conveyed by a good and sufficient quitclaim deed (the "Deed") running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the Deed is to be delivered as herein provided, and said Deed shall convey good and clear record and marketable title thereto, free from encumbrances, except for:

- (a) Provisions of existing building and zoning laws;

(b) Such taxes for the then current year as are not due and payable on the date of the delivery of such Deed; and

(c) The "Permitted Exceptions" (as hereinafter defined).

## **6.2 Title Objections.**

(a) During the period beginning upon the Effective Date and ending at 5:00 p.m. on the sixtieth (60<sup>th</sup>) day thereafter ("Title Inspection Period"), Buyer shall notify Seller in writing (the "Title Notice") prior to the expiration of the Title Inspection Period which exceptions to title (including survey matters), if any, will not be accepted by Buyer. If Buyer fails to notify Seller in writing of its disapproval of any exceptions to title or survey matters by the expiration of the Title Inspection Period, Buyer shall be conclusively deemed to have approved the condition of title to the Premises as of the date of the Title Notice (any matters of record or matters which an accurate survey would reveal existing as of the date of the Title Notice are hereinafter referred to as the "Permitted Exceptions"). If Buyer notifies Seller in writing that Buyer objects to any exceptions to title, Seller shall have ten (10) business days after receipt of the Title Notice to notify Buyer (a) that Seller will remove such objectionable exceptions from title on or before the Closing; provided that Seller may extend the Closing for such period as shall be required to effect such cure, but not beyond thirty (30) days; or (b) that Seller elects not to cause such exceptions to be removed, provided, however, the Seller shall be required to remove and discharge (i) any liens securing payment of an ascertainable sum of money; and (ii) any liens, encumbrances or defects voluntarily granted or created by Seller or any person acting on Seller's behalf after the Effective Date. If Seller gives Buyer notice under clause (b) above, Buyer shall have five (5) business days in which to notify Seller that Buyer will nevertheless proceed with the purchase and take title to the Premises subject to such exceptions, or that Buyer will terminate this Agreement. If this Agreement is terminated pursuant to the foregoing provisions of this Section 6.2(a), then neither party shall have any further rights or obligations hereunder (except those undertakings which are clearly intended to survive a termination pursuant to the other provisions of this Agreement), the Deposit shall be returned to Buyer and each party shall bear its own costs incurred hereunder. If Buyer shall fail to notify Seller of its election within said five (5) day period, Buyer shall be deemed to have elected to proceed with the purchase and take title to the Premises subject to such exceptions, which exceptions shall also be deemed to be Permitted Exceptions. Buyer shall thereafter only have rights to object to title matters in Seller's title arising after the date of the Title Notice.

(b) Seller covenants that at Closing, Seller shall deliver to Buyer marketable and insurable fee simple title to the Premises, subject only to the Permitted Exceptions. Buyer may object to the status of title of the Premises at Closing and refuse to close this transaction if an updated title search done prior to Closing reveals: (i) that Seller has failed to remove or cure any exception to title that Seller agreed to remove or cure pursuant to Section 6.2(a) above; or (ii) any matters other than the Permitted Exceptions, whereupon Buyer may exercise any and all rights and remedies it may have available to it pursuant to this Agreement.

**ARTICLE 7**  
**Development**

**7.1     Development Approvals.**

(a) Buyer shall diligently and continuously pursue obtaining all permits and approvals necessary or required for construction and use of the 40B Project (the "Required Permits") using commercially reasonable efforts and appropriate resources given the nature of the 40B Project. For so long as Buyer makes submissions to appropriate governmental authorities, responds to inquiries from such authorities, and otherwise engages in diligent efforts to obtain the Required Permits, Buyer shall be deemed to be diligently and continuously pursuing the Required Permits. Buyer is not obligated, however, to continue to pursue the Required Permits after such time, if any, that a permit or approval required as part of the Required Permits is denied or the applicable governmental authority ceases to process Buyer's application for any such permit or approval on the basis of lack of jurisdiction or if any applicable governmental authority informs Buyer that Buyer's application will not be given acceptable treatment. Upon any such event or action, Buyer shall be entitled to terminate this Agreement, in which event the portions of the Deposit that remain refundable to Buyer shall be returned to Buyer. In no event shall Buyer be obligated to defend or prosecute litigation in connection with the Required Permits or to continue to attempt to obtain the Required Permits until the Closing Date, as the same may be extended pursuant to Section 9.1 below, after such event or action or communication to Buyer that Buyer's application will not be given acceptable treatment.

(b) If Seller believes that Buyer is not diligently and continuously pursuing the Required Permits, Seller shall provide to Buyer written notice thereof (the "Default Notice"), which Default Notice shall include, in detail, the reasons for Seller's belief. Buyer shall respond to the Default Notice within fifteen (15) days after receipt of the Default Notice (the "Response Period"). If Buyer fails to respond to the Default Notice during the Response Period, Buyer shall be deemed in default of this Agreement and, at Seller's election, this Agreement shall terminate on the tenth (10<sup>th</sup>) business day after the expiration of the Response Period and the Deposit shall be released to Seller. If Buyer responds to the Default Notice during the Response Period and Seller and Buyer are unable to agree on whether Buyer is diligently and continuously pursuing the Required Permits during the Response Period, either party may, within five (5) business days after the expiration of the Response Period, require that such disagreement be resolved by arbitration and immediately commence a proceeding in accordance with Section 7.1(c) below. If neither party commences arbitration in accordance with the previous sentence, Buyer shall be deemed to be diligently pursuing the Required Permits.

(c) Any arbitration proceeding commenced pursuant to Section 7.1(b) above or Section 7.2 below shall be governed by the Federal Arbitration Act and, to the extent not inconsistent with that statute, conducted in accordance with the rules of practice and procedure for the arbitration of commercial disputes of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The arbitration shall be conducted in Boston, Massachusetts, and administered by JAMS, which will appoint a single arbitrator. All arbitration hearings will be commenced within fifteen (15) days of the demand for arbitration unless the arbitrator, for showing of good cause, extends the commencement of such hearing. The decision of the arbitrator will be binding on the

parties, and judgment upon any arbitration award may be entered in any court having jurisdiction. The Parties acknowledge that, by agreeing to arbitrate disputes described in this Section 7, each of them is waiving certain rights, including its rights to seek remedies in court (including a right to a trial by jury), to discovery processes that would be attendant to a court proceeding, and to participate in a class action.

## **7.2     40B Project.**

(a) Buyer shall design the 40B Project with a number of units that may reasonably be expected to be approved. Buyer agrees that its initial design for the 40B Project shall be for three hundred fifty (350) rental units with two hundred sixty-two (262) market rate units; provided, however, that Buyer shall not have the right to modify such number of units without Seller's consent, which consent Seller shall not unreasonably withhold, condition or delay. If Seller denies, conditions or delays granting such consent to Buyer, Buyer may submit the dispute to arbitration in accordance with Section 7.1(c) above. If the arbitration results in a finding that Seller unreasonably withheld, conditioned or delayed consent to Buyer's modification of the number of units for the 40B Project, then Buyer shall be afforded a day-for-day extension of each deadline or time requirement that occurs or occurred after the date of Buyer's request for Seller's consent to Buyer's modification of the number of units for the 40B Project. As an example of the foregoing and not in limitation thereof, if: (a) Buyer requests Seller's consent to Buyer's modification of the number of units for the 40B Project on the sixtieth (60th) day after the Effective Date; (b) Seller declines to grant such consent; (c) the dispute is submitted to arbitration; and (d) the arbitration is resolved in Buyer's favor within one hundred fifty (150) days after the Effective Date, then each of the Due Diligence Termination Date, the deadline for submitting the Mass Housing (as defined in Section 7.4 below) application and the initial Closing Date of June 30, 2008 is extended for ninety (90) days.

(b) Prior to making any submission (formal or informal) of a design for the 40B Project, Buyer shall submit such design for Seller's review. Buyer shall inform Seller approximately every thirty (30) days of the status of the attempt to obtain the Required Permits. Seller will, at no cost to Seller, cooperate with Buyer in the execution of all documents which are reasonably necessary in connection with Buyer's applications for the Required Permits (including the signing and filing of any required applications by Seller and/or in Seller's name, if required, within five (5) business days after Seller's receipt of Buyer's request that Seller take such action).

**7.3     Professionals.** Buyer shall timely retain, at Buyer's own expense, certain professionals Buyer believes are necessary in order to obtain the Required Permits for the 40B Project, and shall submit the names of Buyer's primary professionals to Seller for Seller's review and comments.

**7.4     Massachusetts Housing.** Within one hundred eighty (180) days of the Effective Date, Buyer shall submit a fully completed application for site approval to Massachusetts Housing Finance Agency ("Mass Housing"). Buyer shall promptly respond to all inquiries by Mass Housing in an effort to obtain site approval.

**7.5     Additional Applications.** Buyer shall submit fully completed applications for a comprehensive permit, order of conditions, groundwater discharge permits and all other

Required Permits in a manner consistent with Buyer's obligation to diligently and continuously pursue obtaining the Required Permits.

## **ARTICLE 8**

### **Conditions to Seller's and Buyer's Performance**

**8.1 Conditions to Seller's Obligations.** The obligations of Seller to consummate the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement, subject to the following (any one or more of which may be waived in whole or in part by Seller at its discretion):

- (a) This Agreement has not been terminated by Buyer or Seller in accordance with its terms.
- (b) Buyer has performed in all material respects all covenants and obligations required by this Agreement to be performed by Buyer on or prior to the Closing Date; and
- (c) The representations and warranties made by Buyer in this Agreement are true and correct in all material respects on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made as of the Closing Date, and Buyer delivers a certificate to such effect at Closing;

**8.2 Conditions to Buyer's Obligations.** The obligations of Buyer to consummate the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement, subject to the following (any one or more of which may be waived in whole or in part by Buyer at its discretion):

- (a) This Agreement has not been terminated by Buyer or Seller in accordance with its terms.
- (b) Seller has performed in all material respects all covenants and obligations required by this Agreement to be performed by Seller on or prior to the Closing Date;
- (c) The representations and warranties made by Seller in this Agreement are true and correct in all material respects on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made as of the Closing Date, and Seller delivers a certificate to such effect at Closing;
- (d) Between the Due Diligence Termination Date and the Closing Date there shall have occurred no material adverse change in (i) the condition of the Premises (subject to Section 10.2 below) or (ii) title to the Premises, such as the appearance of title or survey objections not previously disclosed in Buyer's title commitment or survey and not cured by Seller in accordance with Section 6.2 above.
- (e) Subject to the provisions of Section 7.1, all Required Permits for the construction and use of the 40B Project have been Finally Granted, as hereinafter defined, and remain in full force and effect. The term "Finally Granted," as used in this Agreement, means that each of the



Required Permits has been finally approved, signed and filed, in accordance with all applicable rules and requirements, by the governmental body, board, or agency having the jurisdiction and power to grant the same, all appeal periods having run and no appeal having been taken or any appeal having been finally disposed of, without possibility of further appeal, in favor of the validity of the permit.

### **8.3    Termination.**

(a)    If Buyer determines at any time on or before the Closing Date that any of the conditions set forth in Section 8.2 above may not be satisfied by the Closing Date, then Buyer may, in the exercise of its sole and absolute discretion, terminate this Agreement by giving written notice to Seller at any time on or before the Closing Date. Upon such termination, both parties shall be released from all duties and obligations created herein (except as expressly set forth in this Agreement), and the portions of the Deposit that shall have become non-refundable to Buyer up until the time of such termination and the Extension Deposits (as defined in Section 9.1 below) shall be disbursed to Seller, and the portions of the Deposit that remain refundable to Buyer up until the time of such termination shall be disbursed to Buyer; provided, however, if this Agreement is terminated due to a Seller default, or pursuant to Section 10.1 below in the event of a Taking, the Title Company shall promptly return to Buyer the entire Deposit and the Extension Deposits, including any amounts that shall have become non-refundable to Buyer up until the time of such termination.

(b)    If Buyer terminates this Agreement pursuant to Section 8.3(a) above, Buyer shall promptly return all Due Diligence Materials, together with copies of all Property Investigation reports to Seller, and except as provided in Section 8.3(c) below, assign to Seller, for no consideration, all of Buyer's interest in any of the Required Permits and any other assignable governmental and non-governmental permits and approvals then in effect with respect to the Premises, and also deliver copies of any plans prepared by Buyer's engineers or architects, at no cost to Seller; provided, however, the plans shall include only such plans created by third parties at Buyer's direction and shall in no event include any proprietary, design, internal or other work product of such third parties or of Buyer.

(c)    If Buyer is defending or prosecuting litigation or an administrative proceeding involving either the granting or denial of one (1) or more of the Required Permits at such time as Buyer has exhausted all available options to extend the Closing Date and Seller denies Buyer's request for an additional extension of the Closing Date until such time as such litigation or administrative proceeding is resolved, Buyer shall not be obligated to assign any of the Required Permits unless Seller or Seller's purchaser reimburses Buyer for all out-of-pocket costs Buyer shall have incurred in connection with Buyer's efforts to obtain the Required Permits, plus an amount equal to twenty percent (20%) of such out-of-pocket costs.

## **ARTICLE 9**

### **Closing**

### **9.1    Closing.**

(a) If all of the Required Permits have been Finally Granted (and all other conditions hereunder have been satisfied or waived by the Parties), on or before June 30, 2008, the Closing shall take place within thirty (30) days of the date such permits have been granted, on a date selected by the Buyer upon at least ten (10) days advance written notice to the Seller. The Buyer shall have the right to extend the Closing for up to three (3) months by sending written notice thereof to Seller at least fifteen (15) days prior to the expiration of said thirty (30) day period. In order for the extension to become validly exercised, Buyer shall deliver an extension deposit (an "Extension Deposit") to the Title Company equal to Twenty Five Thousand and 00/100 (\$25,000.00) U.S. Dollars for each month of said extension period. Said Extension Deposit(s) shall be in addition to the Purchase Price (i.e., not applicable to the Purchase Price).

(b) In the event that all Required Permits have not been Finally Granted on or before June 30, 2008, the Buyer shall have the right to extend the Closing for up to twelve (12) months, so long as the Buyer is diligently pursuing the Required Permits either through appropriate governmental agencies or boards or through litigation. To validly exercise such extension, the Buyer shall (i) notify the Seller in writing on or before May 31, 2008, of its intent to extend the date of Closing, and (ii) deliver an Extension Deposit to the Title Company equal to Fifteen Thousand and 00/100 (\$15,000.00) U.S. Dollars for each month of said Extension Period. Said Extension Deposit(s) shall be applicable to the Purchase Price (i.e., not in addition to the Purchase Price).

(c) In the event that all Required Permits are Finally Granted during an extension period described in Section 9.1(b) above, the Closing shall take place within thirty (30) days after the date the Required Permits are granted, on a date selected by Buyer upon at least ten (10) days' advance written notice to Seller. Notwithstanding the foregoing, Buyer shall have the right to extend the Closing for up to three (3) months from the expiration of such thirty (30) days by sending written notice thereof to Seller at least fifteen (15) days prior to the expiration of said thirty (30) day period. In order for the extension to become validly exercised, Buyer shall deliver an Extension Deposit to the Title Company equal to Twenty Five Thousand and 00/100 (\$25,000.00) U.S. Dollars for each month of said extension period. Said Extension Deposit(s) shall be in addition to the Purchase Price (i.e., not applicable to the Purchase Price).

(d) Upon expiration of the extensions provided in Sections 9.1 (a), (b) and/or (c) above, if the Parties agree to additional extensions, the Parties shall negotiate in good faith the terms and conditions of such extensions.

(e) In the event that the Buyer terminates this Agreement for any reason other than for Seller's default or a Taking pursuant to Section 10.1 below, said Extension Deposit(s) paid pursuant to this Section 9.1 shall be non-refundable to Buyer and payable to Seller. In the event that the Buyer terminates this Agreement due to a Seller's default or a Taking pursuant to Section 10.1 below, said Extension Deposit(s) paid pursuant to this Section 9.1 shall be returned to Buyer.

(f) It is agreed that time is of the essence in this Agreement.

**9.2 Seller's Closing Deliveries.** On the Closing Date, Seller shall deliver or cause to be delivered at its expense each of the following items to Buyer:

- (a) A duly executed and acknowledged quitclaim Deed conveying the Premises to Buyer or its nominee(s) with title as provided in Section 6.1;
- (b) A certificate or certificates of non-foreign status from Seller in the form attached hereto as Schedule 9.2(b);
- (c) An assignment of the Lease and an estoppel from the Tenant in the forms attached hereto as Exhibits C and D, respectively, if (i) the Lease has not been terminated and (ii) the Closing occurs prior to September 14, 2008.
- (d) Customary affidavits sufficient for Buyer's Title Company to delete any exceptions for parties in possession, mechanic's or materialmen's liens from Buyer's title policy, such affidavits to be prepared by the Buyer's lender or Buyer's counsel;
- (e) Evidence reasonably satisfactory to Buyer and Buyer's Title Company of Seller's existence and good standing, and of the authority of Seller and of the persons acting on behalf of Seller, to convey the Premises and to perform the other obligations of Seller pursuant to this Agreement, all in form and substance satisfactory to Buyer and Buyer's Title Company;
- (f) A counterpart original of the Closing settlement statement (the "Settlement Statement") setting forth the Purchase Price, the Closing adjustments and the application of the Purchase Price as adjusted, all in accordance with the terms of this Agreement, such Settlement Statement to be prepared by the Buyer's or Buyer's counsel in consultation with Seller; and
- (g) A Certificate from Seller stating that all representations and warranties set forth in Section 4.1 hereof remain true, accurate and complete, in all material respects, as of the Closing Date, provided, however, the Seller shall not be required to deliver a certification with respect to any suit(s) commenced after the Effective Date relating to the development of the 40B Project. In the event that the Seller shall not be able to deliver such a Certificate regarding the representations in Sections 4.1(c) due to matters arising after the Effective Date, the Seller shall not be in breach of this Agreement, but the Buyer shall have the option of terminating this Agreement and receiving back the Deposit and any Extension Deposit(s) paid hereunder.
- (h) An assignment of Seller's interest in the Required Permits and any other assignable governmental and non-governmental permits and approvals then in effect with respect to the Premises, in the form attached hereto as Exhibit E;
- (i) An assignment of Seller's interest in all plans and specifications and engineering and architectural work product relating to the Project in the form attached hereto as Exhibit F;
- (j) Such other instruments as Buyer may reasonably request to effectuate the transaction contemplated by this Agreement without additional liability or expense to Seller.

**9.3 Buyer's Closing Deliveries.** On the Closing Date, Buyer shall deliver or cause to be delivered at its expense each of the following to Seller:

- (a) The balance of the Purchase Price, as provided in Section 3.3 above; and

(b) A counterpart original of the Settlement Statement

(c) A Certificate from Buyer stating that all representations and warranties set forth in Section 4.3 hereof remain true, accurate and complete in all material respects as of the Closing Date.

**9.4 Delivery of Deposit.** On the Closing Date, Buyer will instruct the Title Company to deliver or cause to be delivered to Seller the Deposit.

**9.5 Possession and Condition of Premises.** Full possession of the Premises, free of all tenants and occupants (unless the closing occurs prior to September 14, 2008, in which event the Tenant may occupy the Premises) is to be delivered at the time of the delivery of the Deed, said Premises to be then: (a) except as provided in Section 10.2 below, in the same condition as it now is, reasonable use and wear thereof excepted, and (b) not in violation of any building and zoning laws, and (c) in compliance with provisions of any instrument referred to in Section 6.1 hereof.

## **ARTICLE 10**

### **Condemnation/Insurance**

#### **10.1 Condemnation.**

(a) If any portion of or interest in the Premises is taken by exercise of the power of eminent domain or conveyed by deed in lieu of taking, or if any governmental authority has notified Seller prior to the Closing Date of its intent to take or acquire any portion of or interest in the Premises (each an "Taking") and such Taking, in Buyer's reasonable judgment, makes the remaining property physically unsuitable for Buyer's intended purposes, Seller shall give notice promptly to Buyer of such event and Buyer shall have the option to terminate this Agreement by providing notice to Seller to such effect on or before the date which is ten (10) days from Buyer's receipt of said notice of such Taking or on the Closing Date, whichever occurs first, in which event the Seller and the Title Company shall return the Deposit and the Extension Deposits, if any, to Buyer, this Agreement shall terminate, and neither Seller nor Buyer shall have any recourse against the other. If Buyer terminates this Agreement pursuant to this Section 10.1, Buyer shall assign, for no consideration, all of Buyer's interest in the Required Permits and any other assignable governmental and non-governmental permits and approvals then in effect with respect to the Premises to the Seller. Further, in the event Buyer terminates this Agreement pursuant to this Section 10.1, the Buyer shall promptly return all Due Diligence Materials, together with copies of all Property Investigation reports to Seller, and also deliver copies of any plans prepared by Buyer's engineers or architects, at no cost to Seller; provided, however, the reports and plans shall include only such reports and plans created by third parties at Buyer's direction and shall in no event include any proprietary, design, internal or other work product of such third parties or of Buyer.

(b) If Buyer does not timely notify Seller of its election to terminate this Agreement, Buyer shall purchase the Premises and pay the Purchase Price therefor, without reduction, and

Seller shall pay over or assign to Buyer on delivery of the Deed all or such portion of the awards or proceeds recovered or recoverable by Seller on account of such Taking as relates to the Premises, less any amounts reasonably expended by Seller in obtaining such award, and thereafter, agrees to reasonably cooperate with Buyer in recovering any such awards or proceeds not yet recovered.

**10.2 Risk of Loss; Personal Property.** If there is any fire or casualty damage to any improvements located on the Premises, neither Party shall have the right to terminate this Agreement. All insurance proceeds shall be the property of Seller and Seller shall utilize such proceeds to remove debris and Hazardous Material, if any, and to otherwise clear, restore or rehabilitate the Premises to the extent required by applicable laws, rules and regulations, provided that Seller elects not to rebuild or repair such damage. Except for Tenant's personal property, Seller shall remove all personal property located on the Premises prior to Closing. Except for Tenant's personal property, any personal property not removed from the Premises prior to Closing shall be deemed abandoned and shall become the sole property of Buyer.

## **ARTICLE 11**

### **Brokerage Commissions**

**11.1 Representations and Indemnity.** Seller and Buyer each mutually represent and warrant to the other that they have not knowingly dealt with any real estate broker, or any other person entitled to claim a broker's or finder's fee or commission in connection with the transaction contemplated by this Agreement, other than Grubb and Ellis. The Seller agrees to pay the Grubb and Ellis fee in connection with this transaction pursuant to the terms of a separate agreement, and each Party agrees to indemnify and hold harmless the other against any claim, loss, damage, cost, expense, including reasonable attorneys' fees and expenses, or liability for any brokerage commission or similar fee which may be asserted by any person in violation of such Party's foregoing representations. The covenants and agreements contained in this Article 11 shall survive the termination of this Agreement or the Closing.

## **ARTICLE 12**

### **Default, Termination and Remedies**

**12.1 Seller Default.** If Seller fails to timely perform any obligation hereunder (other than the obligation to Close under this Agreement), such failure shall not constitute a Seller default hereunder unless and until Buyer delivers to Seller written notice of such failure and such failure continues for fifteen (15) days after Seller's receipt of such notice. In the event the sale of the Premises as contemplated hereunder is not consummated due to Seller's default hereunder, Buyer shall be entitled, as its sole remedy, either (a) to receive the return of the Deposit (and any Extension Deposit(s)), which return shall operate to terminate this Agreement and release Seller from any and all liability hereunder, or (b) to enforce specific performance of Seller's obligation to convey the Premises to Buyer in accordance with the terms of this Agreement. Notwithstanding the preceding sentence, if specific performance is not available as a remedy because Seller has sold the Premises to a bona fide purchaser for value and without notice of this Agreement, Buyer shall have the right to maintain an action for damages and other remedies

against Seller as may be available at law, in equity or otherwise. Buyer expressly waives its rights to seek damages in the event of any other Seller default hereunder. If the sale of the Premises is not consummated due to Seller's default hereunder, Buyer shall be deemed to have elected to terminate this Agreement and receive back the Deposit (and any Extension Deposit(s)) if Buyer fails to file suit for specific performance against Seller in a court of competent jurisdiction in the Commonwealth of Massachusetts on or before sixty (60) days following the date upon which Closing was to have occurred.

**12.2 Buyer Default.** If Buyer fails to timely perform any obligation hereunder (other than the obligation to Close under this Agreement), such failure shall not constitute a Buyer default hereunder unless and until Seller delivers to Buyer written notice of such failure and such failure continues for fifteen (15) days after Buyer's receipt of such notice. In the event all of the conditions to Closing have been satisfied and Buyer defaults in its obligation to Close hereunder, Seller shall be entitled to terminate this Agreement and to receive the Deposit (and any Extension Deposit(s)) as liquidated damages, in lieu of all other remedies available to Seller at law or in equity for such default. Seller and Buyer agree that the damages resulting to Seller as a result of such default by Buyer as of the Effective Date are difficult or impossible to ascertain and the liquidated damages set forth in the preceding sentence constitute Buyer's and Seller's reasonable estimate of such damages. Notwithstanding the foregoing, in the event of Buyer's Default under this Section 12.2, the Buyer shall assign, for no consideration, all of Buyer's interest in the Required Permits and any other assignable governmental and non-governmental permits and approvals then in effect with respect to the Premises to the Seller. Further the Buyer shall promptly return all Due Diligence Materials, together with copies of all Property Investigation reports to Seller, and also deliver copies of any plans prepared by Buyer's engineers or architects, at no cost to Seller; provided, however, the reports and plans shall include only such reports and plans created by third parties at Buyer's direction and shall in no event include any proprietary, design, internal or other work product of such third parties or of Buyer.

## ARTICLE 13

### Notices

#### 13.1 Notices.

(a) Any notice required or permitted to be delivered under this Agreement shall be in writing and shall be deemed given: (i) when delivered by hand during regular business hours; (ii) three (3) days after being sent by United States Postal Service, registered or certified mail, postage prepaid, return receipt requested; (iii) the next Business Day, if sent by a reputable national overnight express mail service that provides tracing and proof of receipt or refusal of items mailed; or (iv) when sent, if sent by facsimile during business hours as evidenced by hard copy facsimile proof of successful transmission, in each case, addressed to Seller or Buyer, as the case may be, at the address or addresses or transmitted to the facsimile number set forth below or such other addresses as the Parties may designate in a notice similarly sent. Any notice given by a Party to the Title Company shall be simultaneously given to the other Party. Any notice given by a Party to the other party relating to its entitlement to the Deposit and any Extension

Deposit(s) shall be simultaneously given to the Title Company. Notices to Seller and Buyer shall be delivered as follows:

If to SELLER: FTN Limited Partnership  
Attn: Albert Cohen  
14 Middlemost Way  
Stow, MA 01775  
Phone: (978) 897-7612  
FAX: (978) 461-0800

With a copy to: Gerald T. Doherty, Esq.  
Bass, Doherty & Finks, PC  
40 Soldiers Field Place  
Boston, MA 02135  
Phone: (617) 787-6467  
FAX: (617) 787-4963

If to BUYER: TCR Northeast Land Acquisition  
Limited Partnership  
Attn: Timothy O'Connor  
Needham Corporate Center  
160 Gould Street, Suite 121  
Needham, MA 02494  
Phone: (781) 455-0999  
FAX: (781) 455-0996

With a copy to: Petrina M. Markowitz, Esq.  
Goulston & Storrs  
2001 K Street, NW, Suite 1100  
Washington, DC 20006  
Phone: (202) 721-1134  
FAX: (202) 263-0534

(b) Notices to the Title Company shall be delivered to the address stated in Section 3.2(a) above.

#### **ARTICLE 14** **1031 Exchange**

**14.1 1031 Exchange.** Seller and Buyer each acknowledge and agree that Seller may sell the Premises as part of separate Internal Revenue Code Section 1031 tax deferred exchanges for the benefit of Seller. To the extent this is the case, Buyer agrees to assist and cooperate in such exchange at no cost, expense or liability to Buyer and Buyer further agrees to execute any and all documents (subject to the reasonable approval of Buyer's legal counsel) as are reasonably necessary in connection with Seller's exchange. Seller may assign all contract rights and obligations hereunder to a "qualified intermediary," as that term is defined in the Internal Revenue Code and relevant Treasury regulations.

**ARTICLE 15**  
**Miscellaneous**

**15.1 Interpretation.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

**15.2 Captions.** The captions used in connection with the Articles of this Agreement are for convenience only and shall not be deemed to extend, limit or otherwise define or construe the meaning of the language of this Agreement.

**15.3 No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

**15.4 Assignment.** This Agreement may not be assigned by Buyer without Seller's consent (which consent shall not be unreasonably withheld, conditioned or delayed), except that Seller's consent shall not be required: (i) if Buyer assigns this Agreement to any person or entity affiliated with (i.e., controlling, controlled by, or under common control with) Buyer or any Trammell Crow Residential officers or members; or (ii) with respect to an assignment that is effective after Buyer has delivered immediately collectible Purchase Price funds to the Title Company at the Closing.

**15.5 Amendments.** This Agreement may be amended only by a written instrument executed by Seller and Buyer (or Buyer's permitted assignee or permitted transferee).

**15.6 Integration.** This Agreement (including the schedules and exhibits) embodies the entire agreement between Seller and Buyer with respect to the transactions contemplated in this Agreement, and there have been and are no covenants, agreements, representations, warranties or restrictions between Seller and Buyer with regard thereto other than those set forth or provided for in this Agreement.

**15.7 Choice of Law.** This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Massachusetts without reference to any principals of choice or conflict of laws.

**15.8 Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument notwithstanding that both Buyer and Seller are not signatory to the same counterpart.

**15.9 Business Day.** The term "Business Day" as used herein, means any day except a Saturday, a Sunday or a day on which banks in Massachusetts or the Middlesex South County Registry of Deeds are not open for business. In the event any date hereunder (including, without limitation, the Closing Date and expiration date of the Due Diligence Period), falls on a day which is not a Business Day, such date shall be deemed extended to the next Business Day.



**15.10 Time of the Essence.** Time is of the essence of this Agreement; provided, however, if performance shall be impossible as a result of a utilities and/or communications systems failure beyond the control of the party whose action is required, the date for performance shall be extended to the next business day that utilities and/or communications shall be available to such party.

**15.11 Use of Proceeds to Clear Title.** To enable Seller to make conveyance as herein provided, Seller may, at the time of Closing, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests, provided that all documents required to clear title are delivered at Closing, or, in the case of mortgages held by institutional lenders, provisions in accordance with Massachusetts conveyancing practice and satisfactory to Buyer's attorney and Buyer's Title Company are made for obtaining and recording discharges of such mortgages.

**15.12 Execution in Representative Capacity.** If the Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the Seller or Buyer so executing, nor any shareholder, partner, member of a limited liability company, or beneficiary of any trust, shall be personally liable for any obligations, express or implied, hereunder.

**15.13 Submission not an Offer or Option.** The submission of this Agreement or a summary of some or all of its provisions for examination or negotiation by Buyer or Seller does not constitute an offer by Seller or Buyer to enter into an agreement to sell or purchase the Premises, or to undertake any other obligation hereunder, and neither party shall be bound to the other with respect to any such purchase and sale until a definitive agreement satisfactory to the Buyer and Seller in their sole discretion is executed and delivered by both Seller and Buyer.

**15.14. Force Majeure.** If either party is prevented from fulfilling any of its respective Closing obligations as set forth in this Agreement because an act of terrorism or severe weather or other uncontrollable conditions directly preclude a party either from wiring Closing funds or executing and delivering Closing documents, then the time of such performance by either party, including the time for payment of sums due hereunder, shall be extended by a time equal to the amount of such delay, provided that neither party shall be entitled to claim such delay unless it promptly notifies the other party in writing as soon as possible under the circumstances of such delay and the cause thereof.

**15.15 JURY WAIVER.** EACH PARTY TO THIS AGREEMENT WAIVES ITS RIGHT TO A JURY IN ANY LITIGATION IN CONNECTION WITH THIS AGREEMENT, OR THE PREMISES, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. BUYER AND SELLER EACH ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY GIVEN AFTER CONSULTATION BY IT WITH COMPETENT COUNSEL.

**15.16 Attorneys' Fees.** Each party: (a) will bear its own costs (including attorneys' fees) incurred in connection with any litigation, arbitration or similar proceeding between the parties arising out of a dispute related to this Agreement, the Premises or the transactions contemplated by this Agreement; and (b) waives rights to recover attorneys' fees and other costs, if any, that otherwise would be available by statute or as a matter of law. This Section 15.16 shall survive termination of this Agreement or the Closing.

**15.17 Confidentiality.** Seller agrees to keep all terms and conditions of this Agreement confidential; provided, however, Seller may disclose such terms and conditions to Seller's financial and legal advisors who have a need to know such information in order to assist Seller with its legal and financial matters. This Section 15.17 shall survive termination of this Agreement.

**15.18 Escrow.** The Title Company is authorized to receive funds and agrees by acceptance thereof to promptly deposit and to hold same in escrow and to disburse same subject to clearance thereof in accordance with terms and conditions of this Agreement. Failure of clearance of funds shall not excuse performance by Buyer. If the Title Company has any doubt as to its duties or liabilities under the provisions of this Agreement, it may, in its sole discretion, continue to hold the monies that are the subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or it may deposit all the monies then held pursuant to this Agreement with the clerk of the local state or federal court. Upon notifying the parties of such action, all liability on the part of the Title Company shall fully terminate, except to the extent of accounting for any monies theretofore delivered out of escrow. In the event of any suit between Buyer and Seller wherein the Title Company is made a party by virtue of acting as the escrow agent hereunder, or in the event of any suit wherein Title Company interpleads the subject matter of this escrow, the Title Company shall be entitled to recover reasonable attorneys' fees and costs incurred, such fees and costs to be charged and assessed as court costs in favor of the prevailing party. The parties agree that the Title Company shall not be liable to any party or person for misdelivery to Buyer or Seller of monies subject to this escrow, unless such misdelivery shall be due to the Title Company's willful breach of this Agreement or gross negligence. The parties shall have the right to change the holder of the monies from the Title Company to a mutually acceptable third party other than the Title Company, in which case the Title Company shall transfer any monies that are the subject of this escrow to such third party upon receipt of Notice from the parties. The Title Company's obligations shall survive termination of this Agreement or the Closing.

**15.19 Effective Date.** The Effective Date of this Agreement shall be the date that the last of Buyer and Seller executes this Agreement.

*(The next page is the signature page.)*

IN WITNESS WHEREOF, the Parties have executed this instrument as of the day and year first set forth above.

**SELLER:**

**FTN LIMITED PARTNERSHIP**

~~a Massachusetts limited partnership~~

By: ALC Corp., a Massachusetts corporation

By: \_\_\_\_\_

Name: Michael A. Bass

Its: President

hereunto duly authorized

Date: October 20, 2006

**BUYER:**

**TCR LAND ACQUISITION LIMITED**

**PARTNERSHIP, a Texas limited partnership**

By: TCR Northeast Properties, Inc., a Texas corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

hereunto duly authorized

Date: October \_\_\_\_\_, 2006

The undersigned acknowledges and agrees to act as Title Company in accordance with the terms of this Agreement.

**COMMONWEALTH LAND TITLE  
INSURANCE COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this instrument as of the day and year first set forth above.

**SELLER:**

**FTN LIMITED PARTNERSHIP**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_  
hereunto duly authorized

Date: October \_\_\_\_, 2006

**BUYER:**

**TCR LAND ACQUISITION LIMITED  
PARTNERSHIP, a Texas limited partnership**  
By: TCR Northeast Properties, Inc., a Texas corporation

By: Timothy O'Connor

Name: Timothy O'Connor

Its: Vice President  
hereunto duly authorized

Date: October 19, 2006

The undersigned acknowledges and agrees to act as Title Company in accordance with the terms of this Agreement.

**COMMONWEALTH LAND TITLE  
INSURANCE COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### Description of Premises

#### Parcel 1

The land, together with the buildings thereon, located in Concord, Middlesex County, Massachusetts, being shown as Lot 1 on a plan entitled "Land in Concord, Mass. Surveyed for Electronic Space Systems Corporation, Scale 1" = 40', February, 1982" by Charles A. Perkins Co., Inc., Civil Engineers and Surveyors, recorded in the Middlesex South Registry of Deeds with Deed recorded February 1, 1984 at Book 14545, Page 486, bounded and described according to said plan as follows:

- NORTHWESTERLY by land now or formerly of Digital Marine Electronics Corporation four hundred feet (400);
- NORTHEASTERLY by land now or formerly of Marshall B. Dalton, et al., two thousand three hundred sixty-eight and 15/100 (2,368.15);
- SOUTHERLY by land now or formerly of said Marshall B. Dalton, et al., by measuring three lines respectively forty-two and 31/100 feet (42.31), one hundred nineteen and 78/100 feet (119.78) and two hundred ninety-eight and 36/100 feet (298.36); and
- SOUTHWESTERLY by land now or formerly of said Marshall B. Dalton, et al., by five lines measuring respectively five hundred seventy-eight and 80/100 feet (578.80), on hundred eighty-eight and 81/100 feet (188.81), two hundred thirty-eight and 72/100 feet (238.72), one hundred ninety-seven and 33/100 feet (197.33), and eight hundred sixty-nine and 99/100 (869.99).

Said premises contain 20.08 acres, more or less, according to said plan.

Subject to and with the benefit of rights of way and easements of record, the same as now are in force and applicable. Together with rights of ingress to and egress from the premises over a right of way running along the southwest boundary of the premises to Sudbury Road marked as a "forty foot right of way to Sudbury Road" on plan entitled "Plan of Concord, Mass., November 26, 1956, scale 1 inch equals one hundred feet, Laurence A. Murray, Engineer, Concord, Mass." Recorded in the Middlesex South Registry of Deeds as Plan Number 2071 of 1956.

#### Parcel 2

The land with the buildings thereon situated off the northeasterly side of Old Powder Mill Road and on the southerly side of the Assabet River in Concord, Middlesex County, Massachusetts, the same being shown as Lot E, containing 15.8 acres of land, more or less, on a plan by

Laurence A. Murray, Engineer, dated May 11, 1968, recorded with said Deeds Book 11511, Page 662, and being more particularly bounded and described as follows:

- SOUTHWESTERLY by land now or formerly of John T. Spinelli, seven hundred twenty-six feet;
- NORTHWESTERLY by land now or formerly of Hayes and Swett, nine hundred ninety-five feet, more or less;
- NORTHERLY by a curved line following the thread of said Assabet River, five hundred thirty feet, more or less;
- EASTERLY by land of Marshall B. Dalton, et al., Trustees, one thousand one hundred sixty feet, more or less; and
- SOUTHEASTERLY by said land of Marshall B. Dalton, et al., Trustees, three hundred feet.

Being the premises described in deed dated May 23, 1968 recorded with said Deeds, Book 11511, Page 662.

Excepting from the above, a certain parcel of land with the buildings thereon in Concord, Middlesex County, Massachusetts, thereon being shown as Lot 2 on a plan entitled "Hayes Pump & Machinery Co." Definitive Subdivision Plan, Land in Concord, Mass., Owner and Developer: Hayes Real Estate Trust" by R.D. Nelson, Civil Engineers" dated March 24, 1977, April 29, 1977 and recorded with Middlesex South District Registry of Deeds in Book 13203, Page End and bounded and described as follows:

- NORTHWESTERLY by the dividing line between the Town of Acton and Concord as shown on said plan Seventy-Five (75) feet, more or less;
- NORTHERLY by the thread of the stream of the Assabet River Five Hundred Thirty (530) feet, more or less;
- EASTERLY by land of Marshall B. Dalton and Royal Little, as shown on said plan One Thousand One Hundred Sixty (1,160) feet, more or less;
- SOUTHEASTERLY by said land of Dalton and Little Three Hundred and 00/100 (300.00) feet;
- SOUTHWESTERLY by land of John T. Spinelli, Two Hundred Eighty-Six and 00/100 (286.00) feet;
- NORTHWESTERLY by Lot 1 as shown on said plan Three Hundred Forty-Five and 00/100 (345.00) feet;

NORTHERLY by Lot 3 as shown on said plan Two Hundred Five and 02/100 (205.02) feet;

WESTERLY by Lot 3 as shown on said plan Five Hundred Thirty and 00/100 (530.00) feet; and

SOUTHWESTERLY by Lot 3 and part of Lot 1 as shown on said plan Four Hundred Nineteen and 91/100 (419.19) feet.

Containing 5.50 + acres according to said plan.

For title reference see deed from Electronics Space Systems Corporation dated January 16, 1996 and recorded with said Deeds on January 19, 1996 at Book 25984, Page 26.

EXHIBIT B

Environmental Disclosures

Seller has knowledge of the following hazardous materials previously used and stored on the Premises: Oakite.

Seller has knowledge of the following hazardous materials previously and currently used and stored on the Premises: Acetone and Toluol.



## EXHIBIT C

### ASSIGNMENT AND ASSUMPTION OF LEASE

This ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is made as of \_\_\_\_\_, by and between FTN LIMITED PARTNERSHIP, a Massachusetts limited partnership ("Assignor") and \_\_\_\_\_, a Delaware limited liability company ("Assignee").

#### RECITALS:

A. Contemporaneously with the execution hereof, Assignee has purchased from Assignor, and Assignor has sold to Assignee, certain real property described on Exhibit A attached hereto and made a part hereof, and the buildings and other improvements thereon (the "Property"), as more fully described in that certain Purchase and Sale Agreement between Assignor and Assignee, dated as of October 20, 2006 (as amended, the "Purchase Agreement").

B. Assignor desires to assign to Assignee all of its right, title and interest in and to that certain Lease by and between Assignor and L3 Communications Corporation, a Delaware corporation, dated September 14, 1998, as amended (the "Lease"), a true and complete copy of which is attached hereto as Exhibit B; subject, however to the rights of Assignor set forth in the Purchase Agreement to rents under the Lease assigned attributable to the period prior to the date hereof, and Assignee desires to accept such assignment and to assume all of Assignor's obligations under the Lease, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Recitals. The Recitals are incorporated herein by this reference.
2. Assignment. Assignor assigns, transfers, conveys and delegates to Assignee, and Assignee accepts from Assignor, all of Assignor's right, title, interest, duties and obligations in, to and under the Lease, and all claims and rights that Assignor may have or to which Assignor may be entitled under or by virtue of the Leases subject to the terms and conditions of the Purchase Agreement and this Assignment.
3. Assumption. Assignee assumes and agrees to perform and observe all agreements, covenants and obligations to be performed and observed by Assignor under the Lease, subject to the terms and conditions of the Purchase Agreement and this Assignment.
4. Indemnification. Assignee agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including, without limitation, attorneys' fees and expenses) (collectively, the "Losses") asserted against or incurred by

Assignor by reason of or arising out of any failure by Assignee to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder arising in connection with the Lease and related to the period on or after the date hereof. Assignor agrees to indemnify Assignee and hold Assignee harmless from and against any all Losses asserted against or incurred by Assignee by reason of or arising out of any failure by Assignor to perform or observe the obligations, covenants, terms and conditions under the Lease and related to period prior to the date hereof.

5. Assignor's Representations and Warranties. Assignor represents and warrants to Assignee that the following statements are true and accurate:

(a) Leases. Attached hereto as Exhibit B is a true, correct, and complete copy of the Lease. The Lease is in full force and effect, is binding on Assignor, and has not been amended or modified in any way except as set forth on Exhibit B. Assignor had the power and authority to enter into the Lease. Assignor did not and does not need the consent of any third party to execute the Lease or to assign the Lease to Assignee.

(b) Defaults. No default has occurred under the Lease, no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default by Assignor, and Assignor has no knowledge of any default under the Lease.

(c) Assignor's Title. Assignor has neither assigned any of its right, title or interest in or to all or any portion of the Lease nor waived any of its rights under the Lease.

6. Miscellaneous.

(a) Governing Law; Assigns. This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

(b) Entire Agreement; Amendment. This Assignment represents the entire understanding of the parties hereto with respect to the subject matter hereof and may only be amended by a writing executed by the parties hereto. All prior negotiations and discussions by the parties hereto with respect to the subject matter hereof are merged herein and superseded hereby.

(c) Cooperation. Assignor and Assignee shall cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order to fully carry out the intent and purposes of the transactions contemplated hereby.

(d) Counterparts. This Assignment may be executed in counterparts.

(e) Captions. The captions in this Assignment are inserted only for the purpose of convenience of reference and in no way define, limit or describe the scope or intent of this Assignment or any part thereof.

(f) Construction. Each provision of this Assignment has been mutually negotiated, prepared and drafted, each party has been represented by legal counsel, and in connection with the construction of any provision hereof or deletions herefrom no consideration shall be given to the issue of which party actually prepared, drafted, requested or negotiated any provision or deletion.

(g) Jury Waiver. EACH PARTY WAIVES RIGHT TO A JURY IN ANY LITIGATION IN CONNECTION WITH THIS ASSIGNMENT, OR THE PROPERTY, OR THE TRANSACTIONS CONTEMPLATED BY THIS ASSIGNMENT. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY GIVEN AFTER CONSULTATION BY IT WITH COMPETENT COUNSEL.

(h) Attorneys' Fees. Each party to this Assignment will bear its own costs (including attorneys' fees) incurred in connection with any litigation, arbitration or similar proceeding between the parties arising out of a dispute related to this Assignment, the Property or the transactions contemplated by this Assignment. Each party waives rights to recover attorneys' fees and other costs, if any, that otherwise would be available by statute or as a matter of law.

(i) No Joint Venture. Nothing contained herein shall be construed as making Assignor and Assignee the partner, joint venturer or agent of the other and neither party shall have the power or authority to bind the other. The parties have no relationship to each other except as vendor and vendee pursuant to the Agreement.

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**EXHIBIT D**

**FORM OF TENANT ESTOPPEL CERTIFICATE**

RE: Lease dated September 14, 1998 (the "**Lease**"), by and between L3 Communications Corporation, a Delaware corporation ("**Tenant**"), and FTN Limited Partnership, a Massachusetts limited partnership ("**Landlord**"), relating to certain premises (the "**Premises**") located at \_\_\_\_\_, Concord, Massachusetts (the "**Property**")

Ladies and Gentlemen:

As you may know, Landlord under the referenced Lease is contemplating a sale of the Property, including without limitation the Lease. In connection with such conveyance, Tenant hereby acknowledges, certifies and agrees that:

1. The documents attached hereto as Exhibit A constitute complete and accurate copies of the Lease, including all addenda, amendments, modifications, agreements, or other changes to the Lease, and there are no other amendments or agreements to which Tenant is a party that are binding upon Landlord and relate to the Property other than as expressly set forth therein or herein.
2. The term of the Lease commenced on \_\_\_\_\_ and will expire on \_\_\_\_\_.
3. The Lease is in full force and effect and Tenant has not given Landlord any notice of termination or default thereunder.
4. To the best of Tenant's knowledge, no uncured breaches or defaults by either Landlord or Tenant exist under the Lease, no facts or circumstances exist that will constitute a breach or default under the Lease and no offsets, defenses or claims are presently available to Landlord or Tenant under the Lease.
5. Tenant is in full and complete possession of the Premises and has accepted the Premises, as being complete, in compliance with the Lease, and satisfactory for Tenant's purposes.
6. The Premises contains \_\_\_\_\_ rentable square feet.
7. Tenant is paying monthly base rental under the Lease in the amount of \$\_\_\_\_\_, which shall continue through \_\_\_\_\_. Monthly base rental shall increase by \_\_\_\_\_% on the first day of each lease year commencing \_\_\_\_\_.

8. Tenant's proportionate share of Operating Expenses is \_\_\_\_% and Tenant's proportionate share of Real Estate Taxes is \_\_\_\_%.

9. Pursuant to the Lease, all work to be performed by Landlord has been fully completed and accepted by Tenant and all allowances of whatever nature payable by Landlord to Tenant or otherwise have been fully paid, except as follows:\_\_\_\_\_.

10. Tenant has not prepaid any rent or other charge under the Lease to Landlord other than rent for \_\_\_\_\_.

11. No security deposit has been paid to or is presently held by the Landlord under the Lease, and Tenant has not rendered to Landlord any other security or similar deposit with respect to its tenancy under the Lease, except as follows:  
\_\_\_\_\_.

12. Tenant has no option or right of first refusal to purchase all or a portion of the Premises, the Building, or the Property.

13. Tenant covenants and agrees that any brokerage commissions that were due and payable to Tenant's broker pursuant to the Lease have been paid in full.

14. Tenant has not assigned all or any part of its interest in and to the Lease as security or otherwise and has not subleased all or any part of the Premises.

15. Upon Landlord's transfer of the Property to a purchaser, Tenant shall attorn to and recognize purchaser as Landlord under the Lease and the Lease shall remain in full force and effect.

16. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or any state thereof, or any other action brought under said bankruptcy laws with respect to Tenant.

17. The insurance coverage that Tenant is required to obtain under the Lease is in full force and effect, and after consummation of the sales transaction, Tenant agrees to cause the new owner to be named as an additional insured. Tenant has not given or received written notice that Tenant's insurance coverage will be canceled or will not be renewed.

18. To Tenant's knowledge, all systems, elements and components of the Premises are in good working order and repair and sound operating condition. Tenant has not received any notice, citation or other claim alleging any violation of any such law, statute, rule, regulation, ordinance, covenant, condition or restriction.

19. The address for notices to Tenant under the Lease is as follows:  
\_\_\_\_\_  
\_\_\_\_\_

20. The undersigned is duly authorized to execute and deliver this certificate for and on behalf of Tenant.

Tenant acknowledges and agrees that purchaser, purchaser's lender, if any, and each of their successors and assigns shall be entitled to rely on the truth and accuracy of the foregoing certifications made by Tenant, and if purchaser's lender or its designee succeeds to purchaser's interest in the Property or if a sale by power of sale or foreclosure occurs, Tenant shall attorn to purchaser's lender, its designee or a purchaser at such sale as its landlord.

Dated this \_\_\_ day of \_\_\_\_\_, 200\_\_.

Very truly yours,

**L3 COMMUNICATIONS CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Corporate Seal]

## EXHIBIT E

### ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT APPROVALS

This **ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT APPROVALS** (this "**Assignment**") is made as of \_\_\_\_\_, 200\_\_\_\_, by and among **FTN LIMITED PARTNERSHIP**, a Delaware limited liability company (collectively, "**Assignor**"), and \_\_\_\_\_, a Delaware limited liability company ("**Assignee**").

#### RECITALS:

A. Assignor has obtained certain final and unappealable development approvals and permits from various governmental and non-governmental authorities for the potential development of certain real property located in Concord, Massachusetts (the "**Property**"). The development approvals are listed on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "**Development Approvals**").

B. Assignor desires to assign to Assignee all of its right, title and interest in and to the Development Approvals (to the extent assignable), and Assignee desires to accept such assignment and to assume all of Assignor's obligations under the Development Approvals, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Recitals. The Recitals are incorporated herein by this reference.
2. Assignment. Assignor assigns, transfers, conveys and delegates to Assignee, and Assignee accepts from Assignor, all of Assignor's right, title, interest, duties and obligations in, to and under the Development Approvals, and all claims and rights that Assignor may have or to which Assignor may be entitled under or by virtue of the Development Approvals.
3. Assumption. Assignee assumes and agrees to perform and observe all agreements, covenants and obligations to be performed and observed by Assignor under the Development Approvals.
4. Indemnification. Assignee agrees to hold Assignor free and harmless from any and all losses, liabilities, obligations, debts and expenses arising under the Development Approvals on and after the date hereof. Assignor agrees to hold Assignee free and harmless from any and all losses, liabilities, obligations, debts and expenses arising under the Development Approvals prior to the date hereof.
5. Miscellaneous.

5.1 Governing Law; Assigns. This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

5.2 Entire Agreement; Amendment. This Assignment represents the entire understanding of the parties hereto with respect to the subject matter hereof and may only be amended by a writing executed by the parties hereto. All prior negotiations and discussions by the parties hereto with respect to the subject matter hereof are merged herein and superseded hereby.

5.3 Cooperation. Assignor and Assignee shall cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order to fully carry out the intent and purposes of the transactions contemplated hereby.

5.4 Counterparts. This Assignment may be executed in any number of identical counterparts.

5.5 Captions. The captions in this Assignment are inserted only for the purpose of convenience of reference and in no way define, limit or describe the scope or intent of this Assignment or any part thereof.

5.6 Construction. Each provision of this Assignment has been mutually negotiated, prepared and drafted, each party has been represented by legal counsel, and in connection with the construction of any provision hereof or deletions here from no consideration shall be given to the issue of which party actually prepared, drafted, requested or negotiated any provision or deletion.

5.7 Counsel Fees; Jury Trial Waiver. In the event of any litigation regarding the rights and obligations of the parties under this Assignment: (i) each party shall be responsible for and shall pay its own counsel fees, court costs and other direct litigation expenses; and (ii) Assignor and Assignee each unconditionally and irrevocably waives its right to trial by jury. Each party shall be responsible for its own counsel fees in connection with any representation pertaining to the negotiation of this Assignment.

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IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

**ASSIGNOR:**

**FTN LIMITED PARTNERSHIP,**  
a Massachusetts limited partnership

By: ALC Corp.,  
its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT F**

### **ASSIGNMENT AND ASSUMPTION OF SELLER'S PLANS AND SELLER'S CONTRACTS**

This **ASSIGNMENT AND ASSUMPTION OF SELLER'S PLANS AND SELLER'S CONTRACTS** (this "**Assignment**") is made as of \_\_\_\_\_, 200\_\_\_\_, by and among **FTN LIMITED PARTNERSHIP**, a Delaware limited liability company (collectively, "**Assignor**"), and \_\_\_\_\_, a Delaware limited liability company ("**Assignee**").

#### **RECITALS:**

A. Assignor has prepared certain engineering and architectural plans for development of certain real property located in Concord, Massachusetts (the "**Property**"). The plans are listed on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "**Seller's Plans**").

B. Assignor has entered into certain contracts for the development of the Property. The contracts are listed on Exhibit B attached hereto and incorporated herein by this reference (collectively, the "**Seller's Contracts**").

C. Assignor desires to assign to Assignee all of its right, title and interest in and to the Seller's Plans (to the extent assignable) and the Seller's Contracts (to the extent assignable) (all of the foregoing, to the extent assignable, the "**Seller's Documents**"), and Assignee desires to accept such assignment and to assume all of Assignor's obligations under the Seller's Documents, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Recitals. The Recitals are incorporated herein by this reference.
2. Assignment. Assignor assigns, transfers, conveys and delegates to Assignee, and Assignee accepts from Assignor, all of Assignor's right, title, interest, duties and obligations in, to and under the Seller's Documents, and all claims and rights that Assignor may have or to which Assignor may be entitled under or by virtue of the Seller's Documents.
3. Assumption. Assignee assumes and agrees to perform and observe all agreements, covenants and obligations to be performed and observed by Assignor under the Seller's Documents.
4. Indemnification. Assignee agrees to hold Assignor free and harmless from any and all losses, liabilities, obligations, debts and expenses arising under the Seller's Documents on and after the date hereof. Assignor agrees to hold Assignee free and harmless from any and all

losses, liabilities, obligations, debts and expenses arising under the Seller's Documents prior to the date hereof.

5. Miscellaneous.

5.1 Governing Law; Assigns. This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

5.2 Entire Agreement; Amendment. This Assignment represents the entire understanding of the parties hereto with respect to the subject matter hereof and may only be amended by a writing executed by the parties hereto. All prior negotiations and discussions by the parties hereto with respect to the subject matter hereof are merged herein and superseded hereby.

5.3 Cooperation. Assignor and Assignee shall cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order to fully carry out the intent and purposes of the transactions contemplated hereby.

5.4 Counterparts. This Assignment may be executed in any number of identical counterparts.

5.5 Captions. The captions in this Assignment are inserted only for the purpose of convenience of reference and in no way define, limit or describe the scope or intent of this Assignment or any part thereof.

5.6 Construction. Each provision of this Assignment has been mutually negotiated, prepared and drafted, each party has been represented by legal counsel, and in connection with the construction of any provision hereof or deletions here from no consideration shall be given to the issue of which party actually prepared, drafted, requested or negotiated any provision or deletion.

5.7 Counsel Fees; Jury Trial Waiver. In the event of any litigation regarding the rights and obligations of the parties under this Assignment: (i) each party shall be responsible for and shall pay its own counsel fees, court costs and other direct litigation expenses; and (ii) Assignor and Assignee each unconditionally and irrevocably waives its right to trial by jury. Each party shall be responsible for its own counsel fees in connection with any representation pertaining to the negotiation of this Assignment.

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IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

**ASSIGNOR:**

**FTN LIMITED PARTNERSHIP,**  
a Massachusetts limited partnership

By: ALC Corp.,  
its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**APPENDIX D**

**DEVELOPMENT IMPACT REPORT**

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# COMPREHENSIVE PERMIT DEVELOPMENT IMPACT REPORT

(Please type or print information in blanks below)

1. Name of Proposed Subdivision N/A
2. Location Old Powdermill Road, Acton, MA
3. Name of Applicant(s) West Concord Development, LLC
4. Brief Description of the Proposed Project Use in contravention of existing zoning and improvement to existing Old Powdermill Road to provide access to 350 unit rental development in Concord, MA.
5. Name of individual preparing this DIR Cynthia O'Connell, Beals Associates, Inc.  
 Address 98 North Washington Street, Boston, MA 02114  
 Business Phone 617-742-3554 Fax 617-742-0310 E-mail oconnell@bealsassociates.com  
 Professional Credentials Registered Landscape Architect in MA & RI.

## A. Site Description

7. Present permitted and actual land uses by percentage of the site. \*

Uses	Percentage
Industrial	
Commercial	
Residential	
Forest	
Agricultural	
Other (specify)	

Permitted: business uses - 100%  
 Powdermill District  
 Actual: Public pedestrian & vehicular  
 traffic to various sites -  
 100%

8. Total acreage on the site:            acres. \*

Approximate Acreage	At Present	After Completion
Meadow or Brushland (non agriculture)		
Forested		
Agricultural (includes orchards, cropland, pasture)		
Wetland		
Water Surface Area		
Flood Plain		
Unvegetated (rock, earth, or fill)		
Roads, buildings and other impervious surfaces		
Other (indicate type)		

\*the "site" in Acton consists of existing paved public roadways = Sudbury Road and Old Powdermill Road.

9. List the zoning districts in which the site is located and indicate the percentage of the site in each district. *Note: include overlay zoning districts.*

<b>District</b>	<b>Percentage</b>
Powdermill District	100%
Flood Plain Overlay District	
Groundwater Protection Overlay	

See attached plans

10. Predominant soil type(s) on the site: \_\_\_\_\_ District \_\_\_\_\_ \*

Soil drainage (Use the US Soil Conservation Service's definition)

<b>Soil Type</b>	<b>% of the Site</b>
Well drained	
Moderately well drained	
Poorly drained	

11. Are there bedrock outcroppings on the site? \_\_\_\_yes \_\_\_\_X no

12. Approximate percentage of proposed site with slopes between: N/A

<b>Slope</b>	<b>% of the Site</b>
0 - 10%	
10 - 15%	
Greater than 15%	

13. In which of the Groundwater Protection Districts is the site located? How close is the site to a public well? Zone(s) 3 Proximity to a public well: 4,000+ feet

14. Does the project site contain any species of plant or animal life that is identified as rare or endangered? (Consult with the Massachusetts National Heritage Program and the Acton Natural Resources Director). \_\_\_\_yes \_\_\_\_X no

If yes, specify: \_\_\_\_\_

15. Are there any unusual or unique features on the site such as trees larger than 30 inches D.B.H., bogs, kettle ponds, eskers, drumlins, quarries, distinctive rock formation or granite bridges? \_\_\_\_yes \_\_\_\_X no

If yes, specify: \_\_\_\_\_

16. Are there any established footpaths running through the site or railroad right of ways? \_\_\_\_yes \_\_\_\_X no If yes, specify: \_\_\_\_\_

\*The "site" in Acton consists of existing public roadways - Sudbury Road and Old Powdermill Road.

17. Is the site presently used by the community or neighborhood as an open space or recreation area? ☐ yes ☒ no
- Is the site adjacent to conservation land or a recreation area? ☐ yes ☒ no
- If yes, specify: \_\_\_\_\_
18. Does the site include scenic views or will the proposed development cause any scenic vistas to be obstructed from view? ☐ yes ☒ no
- If yes, specify: \_\_\_\_\_
19. Are there wetlands, lakes, ponds, streams, or rivers within or contiguous to the site?  
☒ yes ☐ no
- If yes, specify: Mill Pond on north side of intersection of Route 62 and Sudbury Road.
20. Is there any farmland or forestland on the site protected under Chapter 61A or 61B of the Massachusetts General Laws? ☐ yes ☒ no
- If yes, specify: \_\_\_\_\_
21. Has the site ever been used for the disposal of hazardous waste? ☐ yes ☒ no
- Has a 21E Study been conducted for the site? ☐ yes ☒ no
- If yes, specify results: \_\_\_\_\_
22. Will the proposed activity require use and/or storage of hazardous materials, or generation of hazardous waste? ☐ yes ☒ no
- If yes, specify: \_\_\_\_\_
23. Does the project contain any buildings or sites of historic or archaeological significance? (Consult with the Acton Historic Commission or the Action Historical Society.)  
☐ yes ☒ no
- If yes, please describe: \_\_\_\_\_
24. Is the project contiguous to or does it contain a building in a local historic district or national register district? ☐ yes ☒ no
25. Is the project contiguous to any section of the Isaac Davis Trail?  
☐ yes ☒ no If yes, please describe: \_\_\_\_\_



## B. Circulation System

26. What is the average weekday traffic and peak hour traffic volumes generated by the proposed development? \*

Average weekday traffic		2,254 trips
Average peak hour volumes	weekday morning	175 trips
Average peak hour volumes	weekday evening	210 trips
Average peak hour volumes	Saturday	182 trips

- \* Proposed development in Acton is merely roadway improvements but anticipated use in connection with applicant's development in Concord is shown.
27. Existing street(s) providing access to proposed subdivision: N/A

Name \_\_\_\_\_ Town Classification \_\_\_\_\_

28. Existing intersection(s): list intersections located within 1000 feet of any access to the proposed development.

Sudbury Road and Westside Drive, Rt. 62 & Alba Rd., Rt.62 & High St., Powdermill Rd. Cranberry Circle

29. Location of existing sidewalks within 1000 feet of the proposed site.

Sudbury Rd. & Rt. 62 east side, Sudbury Rd. west side from Rt. 62 to Cranberry Circle

30. Location of proposed sidewalks and their connection to existing sidewalks:

N/A

31. Are there parcels of undeveloped land adjacent to the proposed site? X yes \_\_\_ no

Will access to these undeveloped parcels be provided within the proposed site?  
\_\_\_ yes X no

If yes, please describe Undeveloped parcels are owned by the Town of Concord.

If no, please explain why \_\_\_\_\_

## C. Utilities and Municipal Services

32. What is the total number of bedrooms proposed? N/A

33. If the development has a nonresidential component, what will be its use and size (s.f.)?  
N/A

34. Storm Drainage

a. Describe type, location, and surface water body receiving current surface water of the site:  
Mill Pond receives discharge of stormwater from Sudbury Road through piped system of catch basins.

b. Describe the proposed drainage system and how it will alter existing drainage patterns:  
Existing catch basins will be replaced with deep sump catch basins with hoods. Additional leaching catch basins are proposed in three locations up gradient of the existing basins.

c. Will a NPDS Permit be required? X yes \_\_\_ no

35. Estimate the fire department response time to the site (consult with Fire Dept.) N/A
36. Schools (if residential)
- a. Projected number of new school age children: N/A
- b. Distance to nearest school: N/A

**E. Measures to Mitigate Impacts**

Attach brief descriptions of the measures that will be taken to: see attached sheet

37. Prevent surface water contamination.
38. Prevent groundwater contamination. N/A
39. Maximize groundwater recharge. N/A
40. Prevent erosion and sedimentation.
41. Maintain slope stability. N/A
42. Design the project to conserve energy. N/A
43. Preserve wildlife habitat. N/A
44. Preserve wetlands. N/A
45. Ensure compatibility with the surrounding land uses. N/A
46. Control peak runoff from the site so that the post-development rate of runoff will be no greater than the predevelopment rate of runoff for the 10-year storm event. N/A
47. Preserve historically significant structure and features on the site. N/A
48. To mitigate the impact of the traffic generated by the development. see traffic report

Please use layman's terms where possible while still being accurate and comprehensive. Where appropriate, graphics shall be used. List sources of data, reference materials, and methodology used to determine all conclusions. Use additional sheets as necessary.